

72102

CAUSE NO. 12,764

THE STATE OF TEXAS

VS.

BILLY JOE WARDLOW

§ IN THE DISTRICT COURT OF
§
§ TITUS COUNTY, TEXAS
§
§ 76TH JUDICIAL DISTRICT

STATEMENT OF FACTS

VOIR DIRE EXAMINATION

October 24, 1994

VOLUME 11 of 43 volumes

FILED IN
COURT OF CRIMINAL APPEALS

OCT 11 1995

Troy C. Bennett, Jr., Clerk

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1 CAUSE NO. 12,764

2 THE STATE OF TEXAS § IN THE DISTRICT COURT OF
3 VS. § TITUS COUNTY, TEXAS
4 BILLY JOE WARDLOW § 76TH JUDICIAL DISTRICT

5
6 STATEMENT OF FACTS

7 VOIR DIRE EXAMINATION

8 October 24, 1994

9 VOLUME 11 of 43 volumes

10
11 Before Honorable Gary R. Stephens

12 Judge by Judicial Assignment

13 (Venue changed from Morris County, Texas)

14
15 APPEARANCES

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1 On the 24th day of October, 1994, the
2 above-entitled and numbered cause came on for hearing
3 before said Honorable Court, Judge Gary R. Stephens of
4 Midlothian, Texas, serving by judicial assignment in the
5 District Court of Titus County, Texas, on change of venue
6 from Morris County, Texas, and the following proceedings
7 were had:

8 THE COURT: Let's get on the
9 record.

10 This is Cause No. 12,764, "The State Vs.
11 Billy Joe Wardlow."

12 Let the record reflect that the two
13 Defense Attorneys appointed in this case are present in
14 the courtroom along with both of the District Attorneys
15 that are working on this case and the Defendant himself
16 is present.

17 When we recessed last week I requested
18 that each side present a brief to me which was done
19 within the time period specified.

20 I have studied the briefs, the briefs
21 were on the law as each side believed it applied to the
22 Motion to Suppress what is deemed a confession.

23 The Motion to Suppress went to two
24 letters that were forwarded to the Sheriff from in-house
25 mail by the Defendant.

1 After studying the briefs and doing some
2 independent research I'm going to deny the Motion to
3 Suppress and I will let both letters in that were written
4 by Mr. Wardlow, that's the February letter and September
5 letter.

6 I also want the record to reflect that
7 I called Mr. Old's office to leave a message on his
8 answering machine but I was surprised when he answered
9 the phone so I told him my ruling.

10 At that time he asked for Findings of
11 Fact and Conclusions of Law either this afternoon or
12 tomorrow. I will state into the record my Findings of
13 Fact and Conclusions of Law and then direct the Reporter
14 to prepare them.

15 Now, Mr. Townsend, you informed the
16 Court that if both letters were to be admitted you would
17 not be calling the Co-Defendant. The Witness List that
18 was filed in the last week or so listed the Co-Defendant
19 as an additional witness, there was an objection from the
20 Defense to her being listed. Now, Mr. Townsend, are you
21 in a position now to tell me whether you will or will not
22 use the Co-Defendant in your case in chief?

23 MR. TOWNSEND: Your Honor, I
24 understand that there is another motion that we are going
25 to hear later on that has to do with Suppression of

1 Evidence based on the illegality of the search warrant.
2 I am comfortable, I think I kind of got an advisory
3 opinion the other day from you, I'm comfortable enough
4 with that that we would not be using her as a witness.

5 THE COURT: All right. Now,
6 if you tell me that I'm going to grant the request from
7 the Defense to strike her from the Witness List as far
8 as your case in chief. If you need to call her as
9 rebuttal I'm not going to stop anybody from -- from
10 calling someone in rebuttal when you don't anticipate
11 what the other side is going to present.

12 MR. TOWNSEND: Yes.

13 THE COURT: I will grant Mr.
14 Old's Motion to Strike Tonya Fulfer as a Witness for the
15 State from the Witness -- State's Witness List.

16 The Motion to Suppress heard over the
17 last couple of weeks was for the purpose of helping both
18 sides understand what would or would not be admissible
19 as to voir dire.

20 To begin, Mr. Old, do you know of any
21 other motions that we need to take up prior to beginning
22 the voir dire to aid or assist you in your voir dire
23 preparation?

24 MR. OLD: Your Honor, there
25 are three matters I would like to take up with the Court,

1 they may be subject to another motion, I need some advice
2 and guidance of the Court on voir dire. I do not think
3 there's anything else that needs to -- and what I have
4 is relatively a short matter, won't require testimony.

5 THE COURT: Do you wish to go
6 into them now?

7 MR. OLD: Yes. I would like
8 to.

9 THE COURT: You may proceed.

10 MR. OLD: My first concern
11 about voir dire is how far you are going to allow us to
12 voir dire the jury on the law of parole.

13 THE COURT: All right.

14 MR. OLD: I believe I'm
15 entitled to tell the jury that they will be charged as
16 to the parole law as usually charged, in addition that
17 a life sentence in a capital murder case under Section
18 42.18, Section 82(b) -- excuse me, Section 8(b)2 requests
19 the Court to charge the jury that if a prisoner is
20 serving a life sentence for a capital felony the felon
21 is not eligible for release on parole until the actual
22 calendar time that the prisoner has served without
23 consideration for good time equals 40 calendar years,
24 which is in effect informing the jury that the results
25 of a life sentence for capital murder, you will serve 40

1 years, what we call "flat."

2 THE COURT: You say that it
3 calls for that or that is your interpretation?

4 MR. OLD: That's my
5 interpretation of the law.

6 THE COURT: I think we have
7 a difference of opinion on that law.

8 Before you go to your next point of your
9 speech with that I would like to address the District
10 Attorney, if you have more to add --

11 MR. OLD: I'm looking for
12 guidance whether I should ask that question to the jury
13 or make my objection outside the presence of each juror
14 or the first juror and then have a running objection.

15 THE COURT: I have considered
16 whether or not to allow Defense Attorneys to voir dire
17 on that issue, I have not made my mind up in this
18 particular case. I would like to hear from Mr. Townsend
19 on the State's position on as to whether or not the jury
20 or prospective juror should be informed to the 40 year
21 law.

22 Mr. Townsend?

23 MR. TOWNSEND: Your Honor, I
24 think we filed a motion earlier that would preclude that
25 sort of information at this time. I don't remember

1 exactly when I filed the motion, it has been a good long
2 while ago. There has been some case law come out since
3 that time, since I filed the motion from the United
4 States Supreme Court that makes me reluctant to push my
5 position.

6 THE COURT: All right. I am
7 of the opinion that under current Texas State Law the
8 parole law information is not available, I'm also under
9 the opinion that what I call truth in sentencing may very
10 well be applied which means I don't want to see this case
11 reversed over the parole law.

12 I'm going to grant your request. You
13 may discuss it.

14 MR. OLD: Thank you, Your
15 Honor.

16 My next question is in charging the jury
17 on the voluntariness of a confession, I think that we are
18 entitled to that definition which was the subject of our
19 previous discussion about the functional equivalent of
20 interrogation which I believe is -- it is McGinnis that
21 sets it out.

22 If I could get an advisory opinion or
23 a view of the Court as to whether that should be charged
24 with the usual things on the voluntariness of the
25 confession.

1 THE COURT: I'm not ready to
2 rule, I will let you get into the area on voir dire but
3 I'm not sure whether I'm going to charge the jury or not,
4 it depends on how the evidence evolves, I'm going to hear
5 the same thing in trial I heard on the motion but I will
6 allow you to get into that area on voir dire if you wish
7 to do so.

8 MR. OLD: Thank you.

9 My third matter this morning, I have
10 prepared an exhibit which I would like to have marked
11 "Voir Dire 1."

12
13 (Defendant's Voir Dire Exhibit Number
14 1 was marked for identification.)

15
16 MR. OLD: Your Honor, by way
17 of explanation; Defendant's Voir Dire 1 is a list of all
18 the witnesses that the State has given me by discovery
19 that they will be calling in their case in chief or they
20 were ordered to produce this at a certain time by pre-
21 trial order.

22 For the purposes of voir dire I would
23 like to have the State review it and tell me that it is
24 correct or whether it is deficient so I may use the list
25 to question witnesses.

1 THE COURT: As far as their
2 knowledge of --

3 MR. TOWNSEND: You are asking
4 me to do this by memory?

5 THE COURT: Why don't you
6 check there at lunch and advise the Court, Mr. Old,
7 before we begin at 1:00?

8 MR. TOWNSEND: Do you have a
9 copy of that?

10
11 (Handed to Mr. Townsend.)

12
13 MR. OLD: The addresses are
14 not on that one but I think all the names. (Indicating)

15 MR. TOWNSEND: I will find it,
16 Mr. Old.

17 I don't really think this is necessary
18 that that be listed as an exhibit.

19 THE COURT: What?

20 MR. TOWNSEND: What is usually
21 done is just set them up there and let the people on
22 the --

23 THE COURT: Off the record.

24
25 (Off the record discussion.)

1 (State's Voir Dire Exhibit Numbers 3,
2 4 and 5 were marked for identification.)
3

4 THE COURT: Back on the
5 record.

6 MR. OLD: Your Honor, as to
7 State's Exhibit 3 which appears to be a partial copy of
8 the indictment, we would object to it being offered in
9 evidence or displayed to any juror, potential juror in
10 this case in that the law is clear, an indictment is not
11 evidence of guilt and the displaying of this instrument
12 to them would be prejudicial to the Defendant and
13 additionally it's not -- it's a copy of part of the
14 indictment.

15 THE COURT: Mr. Townsend.

16 MR. TOWNSEND: Your Honor, I
17 think both sides will be pointing out to the potential
18 jurors during the jury selection process that the
19 indictment is not evidence.

20 THE COURT: Let me get this
21 clear, I'm going to overrule that objection, I will also
22 instruct the juror that it's not evidence but I think it
23 may very well be helpful for both sides, for the juror
24 to be able to review the charges for purposes of
25 discussing whether or not this is the type of case that

1 they could possibly consider for death penalty.

2 Since the indictment itself will be
3 presented and read to the jury I don't think they are
4 receiving any additional information that they would not
5 receive otherwise.

6 But I will require that the State
7 substitute for Exhibit 3 a full copy of the front page
8 of the indictment, not just the typed portion. We are
9 either going to have the full copy of the indictment or
10 nothing but we don't need the back.

11 MR. TOWNSEND: Okay.

12 THE COURT: Next, Mr. Old?

13 MR. OLD: The third issue is
14 the issue of the law of parties, I believe.

15 THE COURT: Off the record.

16
17 (Off the record discussion.)

18
19 THE COURT: Back on the
20 record.

21 What was the exhibit marked as, what
22 exhibit number did we have on these documents?

23 MR. TOWNSEND: "3."

24 THE COURT: I had the Sheriff
25 make four copies, let's substitute for that exhibit

1 whatever that number was the entire indictment. I will
2 keep a copy and give a copy to both sides.

3
4 (State's Voir Dire Exhibit Number 3,
5 substituted, was marked for identification.)

6
7 THE COURT: Mr. Old?

8 MR. OLD: State's 3, State's
9 Exhibits 3, 4 and 5 are going to be used as a summary of
10 a question that Mr. Townsend is going to ask?

11 THE COURT: That's my
12 understanding.

13 MR. OLD: And they are only
14 being offered as summaries of the question and not as
15 evidence of anything?

16 THE COURT: Mr. Townsend, you
17 are not offering these three?

18 MR. TOWNSEND: No. These are
19 not offered as evidence.

20 THE COURT: Now, they are
21 offered for purposes of aiding the juror if it does, in
22 understanding our system and procedure.

23 MR. OLD: We would only
24 request that the State supply us with a copy of this
25 prior to commencing voir dire.

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THE COURT: The State is so
ordered.

MR. OLD: Or perhaps two
copies of that.

THE COURT: Okay. Let's get
back on the record.

Mr. Old, do you have any other matters
to take up before we recess for lunch?

MR. OLD: Not at this time,
Your Honor.

THE COURT: Mr. Townsend?

MR. TOWNSEND: Yes.

Your Honor, there is this Motion in
Limine.

THE COURT: Mr. Old, I believe
you have read this motion, haven't you?

MR. OLD: Yes. I have.

THE COURT: What is your
position?

MR. OLD: As long as it
doesn't restrict us from approaching the bench and
telling the Court we want to go into it I don't have any
problem.

THE COURT: That's all you are

1 asking for.

2 MR. TOWNSEND: Yes.

3 MR. OLD: It's procedure, it's
4 not asking to prevent anything.

5 THE COURT: Granted.

6 MR. TOWNSEND: A couple of
7 other brief matters, just for purposes of housekeeping,
8 for instance our number one juror today is on vacation
9 and I think Bobby has released him maybe, I don't know.
10 I believe he has.

11 THE COURT: I believe the
12 first one is a female.

13 MR. TOWNSEND: The first one
14 that actually is going to be here, but the first juror
15 listed, whatever his name.

16 MR. HINSON: "Mr. Seale."

17 THE COURT: All right.

18 MR. TOWNSEND: He has listed
19 on his questionnaire that he will be on vacation from
20 October 17th to October 31st and it's my understanding
21 from talking to Bobby he's not going to be here today.

22 I don't have any objection to that other
23 than I think we need some order of process, you know, if
24 he's not going to be here where is he going to go? Is
25 he going to go on the end of the line or bring him back

1 in?

2 As long as we do it the same way I am
3 happy with it but I just want to know how are we going
4 to handle it?

5 THE COURT: It's my intention
6 to go in order as much as we can, if we contact a juror
7 that has a legitimate excuse not to be here such as being
8 on vacation, out of town, sick or even if it's a work-
9 related problem that doesn't cause more than a day or so
10 we will bring that juror back when he or she is
11 available, he or she will not go to the end of the line,
12 they will just be bumped for a day or two until they are
13 available.

14 MR. OLD: Your Honor, are we
15 going to strike as we go or are we going to wait until
16 we get them back in order to exercise strikes?

17 The Defendant is entitled to a draw.

18 THE COURT: Normally I prefer
19 to strike as we go.

20 Let's have an off the record discussion
21 about that.

22
23 (Off the record discussion.)

24
25 THE COURT: On the record.

1 MR. TOWNSEND: The only other
2 matter I have is I notice in the audience Mrs. Wardlow
3 present in the audience, other than she is a witness for
4 the State and I would not want Mr. Old to come up at some
5 later time and object because she has been a witness to
6 part of the jury selection or whatever, you know.

7 I personally have no objection to her
8 being here and sitting here and this is her son. I have
9 no objection to her watching all of this if she wants to.

10 THE COURT: When trial starts
11 all witnesses will be placed under the Witness Rule. Any
12 witness listed on the State's Witness List will be barred
13 from sitting in on the voir dire process unless both
14 parties agree that the witness will be here and this will
15 apply for Defense and State witnesses. If either the
16 State or Defense knows today who they intend to call
17 during the punishment -- or excuse me, the guilt or
18 innocence stage of this case I want those witnesses
19 excluded from the courtroom unless both the State and
20 Defense agree that those witnesses can remain.

21 Mr. Old?

22 MR. OLD: Your Honor, as to
23 both his mother and father, Mr. and Mrs. Wardlow, the
24 Defendant is -- has authorized me to enter into an
25 agreement with the State that the Rule shall not apply

1 to them.

2 THE COURT: During voir dire.

3 All right. We'll take up the trial when we get to trial
4 but right now I will exempt the Defendant's parents from
5 the Witness Rule and will allow them to remain in the
6 courtroom during voir dire. That's fine.

7 Mr. Townsend, anything further?

8 MR. TOWNSEND: No.

9 THE COURT: Mr. Old, anything
10 further?

11 MR. OLD: Nothing at this
12 time.

13 THE COURT: Okay. I have been
14 contacted by ABC News as have both Defense and State's
15 attorneys, ABC News apparently is doing a story on the
16 cost of capital murder trials in the city and in smaller
17 communities.

18 Why they want to film here is not really
19 clear to me.

20 I have been assured that they are not
21 interested in the trial other than as background
22 information for their piece which is supposed to come out
23 in a week.

24 I have instructed them, meaning ABC
25 News, that if both State and Defense agree I will allow

1 them to film so long as no juror is filmed. I will not
2 allow them to film nor show pictures of jurors.

3 Mr. Townsend, you have told me
4 unofficially your position so on the record what is your
5 position concerning the ABC News request to film if they
6 are here this afternoon or tomorrow for that news filler?

7 MR. TOWNSEND: No objection,
8 Your Honor.

9 THE COURT: Mr. Old, you and
10 I have talked about it, you have told me that you
11 discussed it with your client.

12 Mr. Wardlow, you have heard what I've
13 been talking about, do you have an objection to ABC News
14 being present in this courtroom and filming you, your
15 lawyers, the State's lawyers and anyone else that is here
16 other than the jurors?

17 THE DEFENDANT: No, sir. I
18 have no objection.

19 THE COURT: Then I will allow
20 ABC.

21 Mr. Old, let me ask you on the record,
22 do you have an objection?

23 MR. OLD: Your Honor, I don't
24 have an objection.

25 It is my understanding that -- that this

1 will be less than a few minutes or a short time?

2 THE COURT: The filming may
3 be an hour or two, they assure me about two minutes will
4 make it to the news.

5 MR. OLD: But this -- it will
6 not be during a time when the juror is on the witness
7 stand?

8 THE COURT: It may be a time
9 when the juror is on the witness stand but the juror's
10 name nor face will be shown.

11 So no objection?

12 MR. OLD: And will it be a
13 verbal, the sound, will what they are going to put on
14 television have sound, do you know?

15 THE COURT: I will have to
16 ask. They told me they were only interested in just
17 showing a trial in progress and I have explained it is
18 voir dire.

19 We didn't specifically talk about
20 whether they would be recording juror's answer.

21 MR. OLD: As I understand what
22 was explained to me would be background without the
23 audio.

24 THE COURT: We'll get that
25 clarified before they roll.

1 We are recessed for lunch, be back at
2 1:00.

3 I want to talk briefly to the lawyers.

4 The exhibits that have been marked as
5 voir dire or pre-trial exhibits are all admitted for
6 purpose of the voir dire.

7
8 (State's Voir Dire Exhibit Numbers 3,
9 substituted, 4 and 5 and also Defendant's Voir Dire
10 Exhibit Number 1 were received.)

11
12 (Noon recess.)

13
14 THE COURT: Let's get on the
15 record.

16 Mr. Townsend, you just told me off the
17 record that you did not have your Witness List present
18 or your file present to check those names but the names
19 tendered to you by the Defense appears to be the proper
20 listing of witnesses, is that correct?

21 MR. TOWNSEND: To the best of
22 my memory.

23 THE COURT: And then you
24 mentioned two additional names, what are those names?

25 MR. TOWNSEND: Chris Sanders

1 and Bill Dunlap.

2 THE COURT: Those are not the
3 same two additional names that you turned over on the
4 Witness List with Tonya Fulfer last week?

5 MR. TOWNSEND: No. They are
6 not, Your Honor. These are names that we ascertained
7 within the last three or four days, would be an offense
8 that was located in the Sheriff's Office that was an old
9 Offense Report that I had to go back in the files to, it
10 took them some time and I had decided that they were not
11 going to find it.

12 THE COURT: And when did you
13 tender those names to Mr. Old?

14 MR. TOWNSEND: The Offense
15 Report was mailed to Mr. Old I'm going to say Thursday.

16 THE COURT: Mr. Old, when did
17 you receive the statement from the -- or the Offense
18 Report?

19 MR. OLD: Your Honor, I'm not
20 sure that I have. I don't know what he's talking about.

21 THE COURT: All right.

22 If it was mailed Thursday it's quite
23 possible it would not be in my mail this afternoon.

24 MR. TOWNSEND: The situation
25 I'm talking about, the one, the witnesses we mentioned

1 are possible punishment issue, the offense is regarding
2 theft of a firearm, firearm allegedly taken from Mr.
3 Dunlap.

4 Chris Sanders was apparently a witness
5 to that.

6 MR. OLD: Your Honor, I don't
7 know what he's talking about.

8 THE COURT: At this time --

9 MR. OLD: I have had volumes
10 of information, I have no document designating those two
11 people to be witnesses. Merely sending me a piece of
12 paper in response to discovery does not designate them
13 "witnesses."

14 MR. TOWNSEND: That piece of
15 paper has a letter accompanying it stating -- I can't
16 swear that Mr. Old has received that Offense Report and
17 letter yet, I can call my secretary and find out for
18 certain when it was mailed if you like.

19 THE COURT: I don't have a
20 motion to add any names to a Witness List and until I get
21 one I don't have anything to rule on, frankly.

22 Have you supplemented your Witness List
23 with the two names that you were discussing now, Mr.
24 Townsend?

25 MR. TOWNSEND: That's what we

1 were attempting to do by notifying Mr. Old was to let him
2 know that we were supplementing.

3 THE COURT: The Court does not
4 have a copy of that letter. If you would get a copy of
5 that letter -- I don't need the document, just a copy of
6 the letter with the names and then once I have it before
7 me I will rule on it.

8 Mr. Old objects but until I have
9 something to rule on there is no ruling I can make.

10 MR. TOWNSEND: Can we get her
11 to fax that over here?

12 THE COURT: However you want
13 to do it but I am ready to proceed with voir dire based
14 on the Witness List of the witnesses we all knew about
15 when we last recessed last Tuesday and from what I have
16 been told the State has no objection to Mr. Old using his
17 voir dire exhibits to have jurors review the list of
18 potential witnesses, is that correct?

19 MR. TOWNSEND: I have no
20 objection.

21 THE COURT: Mr. Old, are you
22 ready to proceed?

23 MR. OLD: Yes, Your Honor.

24 THE COURT: Mr. Townsend, are
25 you ready?

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MR. TOWNSEND: Yes, Your

Honor.

THE COURT: Bring in our first
juror.

(The following occurred in the presence
of the potential juror:)

THE COURT: Good afternoon,
ma'am. How are you doing?

THE POTENTIAL JUROR: Fine.

THE COURT: Take a seat right
there in the witness stand.

You are "Terri Lee", is that correct?

THE POTENTIAL JUROR: That's
correct.

THE COURT: Ms. Lee, you were
sworn in with the entire panel so you are still under
oath.

THE POTENTIAL JUROR: Yes,
sir.

THE COURT: Ms. Lee, let me
again introduce myself and tell you why you are here,
first my name is Gary Stephens and I am the Judge that
will be presiding over the jury selection and trial.

1 We have two lawyers, we have one lawyer
2 representing the State and that is the District Attorney
3 of Morris County, Mr. Richard Townsend, he will be
4 assisted by Mr. Lee, Randy Lee who will probably join us
5 shortly.

6 I believe he's the elected District
7 Attorney of Cass County?

8 MR. TOWNSEND: Yes, Your
9 Honor.

10 THE COURT: And he will be
11 assisting in this case.

12 We have two Defense Attorneys, but again
13 only one in the courtroom and that's Mr. Bird Old, III.

14 We have another Defense Attorney who is
15 assisting him in that, Mr. Lance Hinson, who will join
16 us shortly.

17 Now, Ms. Lee, the lawyers are going to
18 talk to you today about some principles of law involved
19 in a death penalty case. You will be questioned about
20 your feelings on the law and whether or not you can
21 follow the law that will apply in order to be a juror.
22 You don't necessarily have to agree with our law, if you
23 do disagree with the law but you can follow the law you
24 are still qualified but if you have a disagreement with
25 some aspect of our law that would prevent you from

1 following the law you would not be qualified, that's why
2 we need to know something about you.

3 The lawyers have read the questionnaire
4 but they need more than we have just got from you there
5 so what we want you to do is just open up and be honest
6 with us.

7 Frankly, you have a right to your
8 opinions so we don't really care what those opinions are
9 but we care very much to have you share these opinions
10 and we will make this as short as possible and the way
11 we do this is just open up and share those opinions with
12 us.

13 THE POTENTIAL JUROR: Okay.

14 THE COURT: You are not on
15 trial if it may seem like it.

16 If there's something that you don't
17 understand please stop the lawyers and tell them you
18 don't understand and get it clarified.

19 THE POTENTIAL JUROR: Okay.

20 THE COURT: Mr. Townsend, are
21 you ready to proceed?

22 MR. TOWNSEND: Yes, Your
23 Honor.

24 THE COURT: The State may
25 proceed.

1 TERRI D. LEE, Potential Juror #412,
2 was called as a Potential Juror and, having been
3 previously sworn by the Court, testified as follows:
4

5 VOIR DIRE EXAMINATION

6 BY MR. TOWNSEND

7
8 Q Ms. Lee, I am Richard Townsend as the Judge
9 just said and I represent the State of Texas in Morris
10 County in this case.

11 Like the Judge said, there's no right
12 or wrong opinion, we just want to know what your opinion
13 is. And if I mumble or for some reason you can't
14 understand me let me know that because my wife tells me
15 I mumble.

16 If you will, I have read your
17 questionnaire and I saw that your answer on the death
18 penalty, what we call "the death penalty" that you
19 believe the death penalty is appropriate in some murder
20 cases and you could return a verdict in a proper case
21 which assessed the death penalty.

22 Does this pretty well sum up your
23 feelings about the death penalty?

24 A Yes, sir.

25 My only thing I would like to add to

1 that is that this may be irrelevant but I have two
2 children that are 10 and 13, they are boys and when I
3 realized when I got here that it was a 19 year old male
4 suspect --

5 Q Yes.

6 A -- that really concerned me.

7 I do believe in the death penalty if a
8 person without any doubt whatsoever took the life of
9 another person.

10 Q Yes.

11 A I really do. But my heart, when it comes down
12 to convicting a young man it would be real hard for me.

13 Q Are you saying that the age of the Defendant
14 would make a difference with you?

15 A Yes, sir. And that may not necessarily be
16 right but it might be.

17 Q Well, see, we don't know how you feel and
18 that's what we are trying to find out.

19 A I understand that and I don't know any other
20 way to express it to you but I, all I know to say is that
21 I am afraid my heart would come into play.

22 Q Okay.

23 A I would not have a problem putting him in
24 prison for life because I do feel like it may be harmful
25 to someone else if he were capable of doing that.

1 Q Okay. Do you believe that if you were given
2 an appropriate case, and we are not really going to talk
3 about the facts of this case, but if you were given an
4 appropriate case could you return a verdict that would
5 result in the execution of someone?

6 A "Of anyone, if I knew without any question that
7 they had taken the life of someone else?"

8 Is that what you are asking?

9 Q Yes.

10 A Yes. I think I could. Yes.

11 Q Okay. Would the fact that the person was 19,
12 would that prevent you from being able to do it?

13 A It might. I know that's hard to understand.
14 I just have teenage boys and I have a hard time with
15 that.

16 Q No, ma'am. It's not hard to understand but
17 what we need I think is --

18 A "Definite?"

19 Q -- it's not "I can do it" or not "I might can
20 do it", can you do it if he's 19?

21 Are you telling us you can't do it or
22 are you telling us that you can do it if the facts are
23 appropriate?

24 A If I had to say and it came down to it and I
25 knew in my heart that he had done it, yes, I think I

1 could.

2 Q The fact that he was 19 wouldn't prevent you
3 from doing it then if you felt it was appropriate?

4 A I don't think it would prevent me. No.

5 Q Let me go on a little further then, you know,
6 in Texas we have two kinds of murder, we have what we
7 call just "plain murder" where someone has intentionally
8 caused the death of another individual and that's without
9 an excuse or a legal justification, wasn't self defense,
10 it wasn't an accident, that sort of thing, just
11 intentionally, just murder someone, that's "murder."

12 And the most a person can receive in
13 punishment for that is a life sentence.

14 However, in Texas we also have what is
15 called "capital murder" and "capital murder", that's a
16 murder with your basic plain murder plus something and
17 that "plus something" is that the person that was
18 murdered is a police officer killed in the line of duty,
19 a person was murdered during the commission of a robbery,
20 during the commission of a rape, during the commission
21 of a burglary, something of that nature.

22 So, you see instead of me just saying
23 "I don't like this guy, I'm going to kill him" you have
24 got an additional crime involved.

25 Are you pretty clear on that?

1 A Yes, sir.

2 Q The kind of juror we need, Ms. Lee, are the
3 kind of jurors who can keep an open mind during this
4 trial as to first the guilt and innocence of the
5 defendant and then if the defendant is found guilty keep
6 an open mind as to what the punishment should be.

7 And in a capital murder case if the
8 person is found guilty they don't automatically receive
9 the death penalty or the life sentence, the jury then has
10 to hear another hearing and hear more evidence to help
11 them decide what the proper punishment should be.

12 Now, when they are setting that
13 punishment they can go back to that first part of the
14 trial and remember that and use that as part of their
15 thought process in deciding what the proper punishment
16 should be as long as you can focus, "refocus" you might
17 say and say, "Okay, now, we have already decided this
18 person is guilty, that part is over, we have got to re-
19 think all of this stuff plus I have got to be able to
20 think over all this evidence we heard during the
21 punishment hearing before making my decision on that.

22 And that punishment hearing, you may
23 hear all sorts of evidence about the defendant's
24 background, criminal history, how his parents treated him
25 and evidence from psychologists, psychiatrists, just

1 virtually anything.

2 And so we are starting over, we are
3 going to decide the guilt or innocence, of course if he's
4 not guilty then it's over, if he's guilty then you go and
5 you hear others, some more evidence and then you decide
6 life or death depending on what you feel after you heard
7 all of that evidence.

8 Do you believe that you could reserve
9 your judgment on whether you are going to give a person
10 a life sentence or death penalty until you heard all the
11 evidence and not just decide after you heard the guilt
12 or innocence part, "Well, that is terrible, I'm going to
13 give him the death penalty" or "I am just not going to
14 give him the death penalty" but just wait, could you do
15 that?

16 A Yes. I think I can.

17 MR. TOWNSEND: I want to show
18 you -- may I approach the witness, Your Honor?

19 THE COURT: You may.

20 MR. TOWNSEND: I want to show
21 you a little flow chart that we have got here that kind
22 of explains this if I can find it.

23
24 (Handed to the potential juror.)
25

1 MR. TOWNSEND: And that kind
2 of shows you the way a capital murder trial goes and
3 basically, as I have said, you go to guilt or innocence
4 phase then once you have heard that then you go to the
5 punishment phase down there where it says "Phase II,
6 Punishment." (Indicating)

7 THE POTENTIAL JUROR: Yes.

8 Q (BY MR. TOWNSEND) Then you are going to hear
9 some more evidence and after you have heard that evidence
10 you will hear the Special Issues, at least two Special
11 Issues, we are going to talk about two of those in a
12 little bit but basically you are going to decide the
13 answer to Special Issue #1 and in a little bit, you don't
14 know what it is but we'll go over that in a minute, but
15 if you decide the answer to Special Issue #1 is "Yes"
16 then you are going to go on down to Special Issue #2.

17 If you decide the answer to Special
18 Issue #1 is "No" then the defendant will receive a life
19 sentence, if you decide the answer to Special Issue #1
20 is "Yes" then you go to Special Issue #2, if you decide
21 the answer to that is "Yes" then they would receive a
22 life sentence and if you decide the answer to that is
23 "No" then the defendant would receive the death sentence.

24 So there's never a time they are going
25 to say, "Who wants to give the death penalty" or "Who

1 wants to give him a life sentence in the penitentiary",
2 that's not how you -- when you go back and deliberate
3 punishment you are going to be answering these Special
4 Issues.

5 Now, it might be a little easier on you
6 if you didn't know what the answer to those Special
7 Issues meant so far as what would happen but you are
8 going to know, you are going to know if you answer "Yes"
9 to Number One and "No" to Number Two he's getting the
10 death penalty and if you answer them any other way then
11 the defendant is going to receive life sentence.

12 So even though you are not saying "life
13 or death" you are going to know what the result of your
14 answers are.

15 A Right.

16 Q And the kind of juror we need are those kind
17 of jurors who can look at all the evidence and base their
18 answer to those Special Issues on the evidence and
19 basically do what you might say, "Just let the chips fall
20 where they may."

21 A Yes.

22 Q And it turns out after honestly answering these
23 questions the defendant receives a life sentence, so be
24 it, and if he receives the death penalty so be it.

25 Do you believe you are the type juror

1 that could do that?

2 A Yes, sir.

3 MR. TOWNSEND: Okay. Approach
4 the witness, Your Honor?

5 THE COURT: You may.

6 MR. TOWNSEND: I have another
7 sheet for you to look at, if you will just read over that
8 Special Issue #1 and then we'll talk about it.

9
10 (Handed to the potential juror.)

11
12 MR. TOWNSEND: Okay. Ms. Lee,
13 have you looked at Special Issue #1?

14 THE POTENTIAL JUROR: Yes.

15 Q (BY MR. TOWNSEND) Basically Special Issue #1
16 I think after you have read it if you disagree with me
17 let me know, it talks about basically the future
18 dangerousness of the defendant, is he going to be a
19 danger in the future, is that basically what it meant to
20 you?

21 A Yes.

22 Q And you are being asked in that question not
23 to predict whether he's going to be a danger in the
24 future but just is it probable, is there a probability?

25 You are not expected to guarantee that

1 he's going to be a danger in the future, you are not
2 expected to predict whether he's going to be a danger in
3 the future or not but just to determine whether it's
4 probable or not and that's the reason that the word
5 "probable" is in there, you know, there is another word
6 in there or phrase in there where it talks about criminal
7 acts of violence.

8 Now, this trial is about a murder case
9 but criminal acts of violence doesn't necessarily have
10 to mean murder, it can mean assault or rape or, you know,
11 anything that would constitute a criminal act of
12 violence.

13 So when you are deciding the probability
14 you don't have to decide if it's probable that he will
15 commit another murder, just that it's probable that he
16 would commit some other criminal act of violence, are you
17 clear on that?

18 A Yes.

19 Q If you will look at Special Issue #2 and read
20 that over and then we will talk about it a little bit.

21 A Okay.

22 Q That's a bunch of legal mumbo-jumbo but I will
23 tell you kind of what it meant to me and you can tell me
24 whether you agree with it or not.

25 Basically what Special Issue #2 asks

1 is, okay, I found this person guilty of capital murder,
2 I have decided that, yes, he's going to probably be a
3 danger in the future because if you decided "No" then
4 you wouldn't be answering it so you have made those two
5 decisions already.

6 Then you have got to look at, is there
7 any evidence or enough sufficient evidence, sufficient
8 mitigating evidence to warrant giving this person a life
9 sentence rather than the death penalty.

10 So rather than -- this is a situation
11 where rather than the State having a burden of proving
12 beyond a reasonable doubt as we do on guilt or innocence,
13 as we do in Special Issue #1, we don't have to prove
14 anything to you on Special Issue #2. It's just basically
15 your decision, do you feel like there is sufficient
16 mitigating circumstances to warrant a life sentence
17 rather than the death penalty?

18 For instance, a mitigating circumstance
19 might be one thing to you and it might be something else
20 to someone else, you know, someone might say, "Well, I
21 don't believe I would give the death penalty because he
22 seems like such a fine young man", someone else may say,
23 "Well, he doesn't seem that fine to me" or you might say,
24 one juror might think, "Well, I just don't believe I will
25 give him the death penalty because the victim didn't seem

1 like a very nice guy" and another person may say, "Well,
2 it doesn't matter whether the victim was a nice guy or
3 not."

4 So "sufficient mitigating circumstances"
5 can just mean anything to anybody, basically, but
6 basically a mitigating evidence is any evidence that
7 would reduce the defendant's moral blameworthiness for
8 the crime committed to make a person on the jury after
9 hearing that evidence think, well, he's just not quite
10 as responsible or quite as morally blameworthy for this.

11 Basically it's just saying after I have
12 heard all this stuff I have listened to all the evidence
13 and just don't think this is a death penalty case or I
14 believe they have shown me some evidence that convinces
15 me that a person shouldn't receive the death penalty.

16 Do you think you could, after hearing
17 all the evidence and even though you found the person
18 guilty of capital murder, even though you had found, yes,
19 they are going to be dangerous in the future, do you
20 think you could go back again and fairly consider all the
21 evidence before making your decision on Special Issue #2?

22 A Yes. I do.

23 Q So what we are asking you to do is first on
24 guilt or innocence just concern yourself with that, don't
25 worry yourself with the rest of it at that point then

1 after you, okay, at that point you get Special Issue #1,
2 you found the person guilty of capital murder, a serious
3 crime, but that's over, that decision has been made. You
4 have got to start over in your mind and you don't have
5 to ignore the evidence you heard during the guilt or
6 innocence phase because we certainly would want you to
7 consider that but that is only part of your
8 consideration, do you understand that?

9 A Yes, sir.

10 Q And then you also consider all that punishment
11 evidence and make your decision to Special Issue #1
12 without regard to the fact that you have already found
13 him guilty, could you do that?

14 A Yes, sir.

15 Q Okay. When you get to Special Issue #2 you
16 have got another hurdle to jump, you have already found
17 him guilty, you have already decided he's dangerous in
18 the future. Would you be able to put that aside and base
19 your answer to Special Issue #2 just on the facts of the
20 case and just on what you considered to be the
21 circumstances and not just automatically give him the
22 death penalty because you had found out, you had decided
23 that he was guilty and you had decided that he was
24 dangerous in the future, could you make that decision
25 independent of those other two decisions?

1 A I think I could.

2 MR. TOWNSEND: Okay. Approach
3 the witness, Your Honor?

4 THE COURT: You may.

5 MR. TOWNSEND: Let me -- I
6 meant to show you this earlier and I forgot; this is the
7 indictment, a copy of the indictment in this case.

8 The Defendant in this case, Mr. Wardlow,
9 is charged with capital murder and we talked about how
10 capital murder is murder plus something?

11 THE POTENTIAL JUROR: Yes.

12 Q (BY MR. TOWNSEND) If you will read that, and
13 I don't think it's necessary that you read the entire
14 indictment maybe but if you will just read this, this
15 portion right here I think you can see there.
16 (Indicating)

17 Okay. Ms. Lee, do you understand or can
18 you see how that would be "capital murder" rather than
19 just a plain murder? (Indicating)

20 A Yes, sir.

21 Q Because there's an allegation in there that a
22 robbery took place also?

23 A Right.

24 Q Ms. Lee, I want to shift gears a little bit and
25 instead of talking to you about capital murder I want to

1 just talk to you about some more -- a little generalized
2 area of the law; you know if a person is accused of
3 capital murder, and let's say for instance the jury
4 decides that, well, you know, I believe the State proved
5 their case as to the murder but I don't think they proved
6 the robbery, then the jury would find the defendant
7 guilty of murder but not capital murder.

8 Can you see where that would be
9 possible?

10 A Yes.

11 Q Okay. The punishment range for capital murder
12 is different than that for murder. The punishment range
13 for murder is anywhere from five years probation up to
14 10 years probation or from five years in the penitentiary
15 up to 99 years or life so you have got a broad range, as
16 broad as one can imagine almost.

17 And of course murder depends on, you
18 know, what you felt the appropriate punishment would be
19 depends upon the facts of the case and as you well
20 imagine an intentional murder, you know, that is a pretty
21 vague statement. You can have all kinds of intentional
22 murders, some that you might consider to be terribly
23 vicious and violent you might feel like that that person
24 should receive a life sentence or 99 years, on the other
25 hand you might have other type murders that were

1 considerably less violent, you might have what you
2 probably heard referred to as "mercy killings" where
3 maybe a person is elderly, maybe they have cancer and
4 they are dying and they beg their husband or wife to end
5 it for them and they in fact do so.

6 So you might consider that that would
7 be, even though that is an intentional murder it's a much
8 less different situation, would you agree with me on
9 that?

10 A Yes.

11 Q So would you consider when I'm talking to you
12 about the range of punishment you have got anywhere from
13 five years probation up through 99 years or life.

14 If you were seated as a juror in this
15 case in order to be fair and impartial we have got to
16 have those jurors who can -- who can actually consider
17 that full range of punishment, whether it's 99, life, you
18 know, or the five years probation.

19 Do you think you could consider the full
20 range of punishment?

21 A I do.

22 Q And, you know, we are not asking you to say,
23 "Well, I would give him this" or "I would give him that"
24 but just that you would fairly consider the full range?

25 A Right.

1 Q In Texas and in most states as far as that --
2 probably all of them the burden of proof is beyond a
3 reasonable doubt, not beyond all doubt, just "beyond a
4 reasonable doubt", do you believe that you could hold the
5 State to our burden of proving this case to you beyond
6 a reasonable doubt and not just say, "Well, it looks like
7 he probably did it", would you hold us to our burden of
8 proving the case to you beyond a reasonable doubt?

9 Am I confusing you?

10 A Maybe a little. I'm not sure I understand.

11 Q Okay. In a criminal case the State is required
12 to prove everything.

13 A Yes.

14 Q The defendant doesn't have to prove anything.

15 A Right.

16 Q We have got to prove he did it, he doesn't have
17 to prove he didn't do it, okay?

18 A Okay.

19 Q And we have got to prove that case by a certain
20 standard and that standard is we have to prove the case
21 "beyond a reasonable doubt."

22 A Right.

23 Q That is our burden and we accept that burden.

24 A Yes, sir.

25 Q If we didn't accept that burden we wouldn't be

1 here.

2 A Right.

3 Q Would you hold us to that burden and not some
4 lesser burden. That's the burden we are accepting,
5 that's the burden we have to prove, would you hold us to
6 that burden and not give us a little leeway, not give us
7 more leeway than we should have?

8 A I would.

9 I'm just not still sure I am
10 understanding what you are trying to ask me.

11 Q If we are required to prove our case beyond a
12 reasonable doubt?

13 A Yes, sir.

14 Q Will you make us do it?

15 A Yes. Yes.

16 Q You not find him guilty unless we do?

17 A Yes.

18 Q Okay. I think I'm talking too much.

19 A I just wanted to be sure I understood what you
20 were asking me.

21 Q Okay. Involved along with that burden is
22 something, you know, we have the burden of proof, like
23 I said, the Defense over there, they don't have a burden,
24 they can sit there quietly, they don't have to do
25 anything. It's our job to prove the case and along with

1 that burden of proof comes something we have all probably
2 heard of on TV and read about, the Fifth Amendment
3 privilege.

4 That Fifth Amendment privilege is a
5 privilege that the defendant has to not testify if he so
6 chooses and to be a fair and impartial juror, you have
7 got to be able to sit there and listen to the evidence
8 that is presented and base your decision strictly on that
9 evidence.

10 Could you do that strictly on the
11 evidence that is presented to you?

12 A Yes. I think I could. Yes.

13 Q And if the defendant shows not to testify, he
14 might have a number of reasons on why not to testify but
15 it's not your job to be concerned as to that, could you
16 put aside -- it's kind of human nature for a person to
17 say, you know, "If I was on trial for this I would want
18 to get up there and tell my side."

19 A Right.

20 Q Or "I would sure like to hear what he's got to
21 say."

22 Now, that might be human nature but in
23 order to be a fair and impartial juror you can't let that
24 be involved in your decision-making process. You can't
25 say, "Well, I'm not sure they proved it but since he

1 didn't testify."

2 A Yes.

3 Q Would you be able to put this all aside and
4 just base your decision on the evidence that is
5 presented, not on some speculation that you might have
6 as to why certain evidence wasn't presented?

7 A I think I would. Yes.

8 THE COURT: Twenty-five
9 minutes.

10 MR. TOWNSEND: Thank you, Your
11 Honor.

12 That Fifth Amendment privilege goes as
13 far as the guilt or innocence stage of the trial but it
14 also goes into that punishment phase, you know,
15 particularly in a death penalty trial you might if a
16 person was found guilty of it you might sit then and
17 think, well, if he would just get up there and say he's
18 sorry that might make me some difference in the way I
19 felt about this case.

20 But the Fifth Amendment privilege still
21 applies there, he's got a right to testify during that
22 punishment hearing but he also has a right not to testify
23 if he so chooses.

24 THE POTENTIAL JUROR: Yes.

25 Q (BY MR. TOWNSEND) Just like in guilt or

1 innocence, you can't consider the fact that he doesn't
2 testify and we don't know, you know, if he's going to
3 testify in this trial or not.

4 A Right.

5 Q And I'm not really talking about this trial but
6 just murder trials in general.

7 If he doesn't testify on the punishment
8 hearing would you be able to be a fair and impartial
9 juror and set that aside and not consider that in your
10 answer to Special Issue #1 or Special Issue #2?

11 A Yes.

12 Q Okay. In many trials or in all trials you have
13 all sorts of witnesses and to be a fair and impartial
14 juror you have got to be able to start those witnesses
15 out at the same point on the starting line, not give one
16 of them a head start, could you do that?

17 A Yes.

18 Q Give everybody a fair chance and listen to
19 everybody's testimony?

20 A I think I would. Yes.

21 Q After you have listened to their testimony, you
22 know, it's perfectly okay for you to say, well, you know,
23 I think -- I believe what that person said or I'm not
24 sure if that person knew what they were talking about or
25 I just think that person was lying.

1 A Yes, sir.

2 Q But would you start them out on the same point
3 to begin with?

4 A Yes.

5 Q Okay. And, you know, I doubt that this is
6 going to happen but could you do that in a case like this
7 if there were a witness that you knew?

8 A I believe I could.

9 Q Start them out at the same spot?

10 A Yes.

11 Q How about if the witness were a police officer,
12 would you be able to start, give them the same, you know,
13 not give them an advantage because they are a police
14 officer but on the other hand not give them a
15 disadvantage because they are a police officer?

16 A Yes, sir.

17 Q Would you just hold them to the same
18 credibility standard that you would anyone else?

19 A Yes.

20 Q The thing that is important, Ms. Lee, is that
21 we need jurors that are fair, we need jurors that will
22 be impartial, we need jurors who can make the decision
23 that is needed.

24 I will be straightforward with you, the
25 State of Texas in this case is seeking the death penalty

1 against this Defendant. And I know that those are harsh
2 words.

3 At this point do you have anything to
4 say or any questions you might want to ask me about any
5 of the legal matters that we have discussed or any burden
6 of proof or anything else?

7 A No, sir.

8 Q Okay. The important thing to remember is
9 in a death penalty case it's not automatic, you know,
10 once -- we have had people, you know, talked to people
11 in jury selection previously who thought, well, if he's
12 found guilty of capital murder he's automatically going
13 to get the death penalty.

14 I think you understand that's not the
15 way it is.

16 A Right.

17 Q There are still other choices to make.

18 Could you make those choices as to guilt
19 and innocence and then having made that choice go through
20 those Special Issues and basically, as I said, "Let the
21 chips fall where they may?"

22 If the State of Texas gives you an
23 appropriate case, and only you will be the one to decide
24 whether it's appropriate or not for the death penalty?

25 A Yes.

1 Q But if the State of Texas gives you an
2 appropriate case for the death penalty, an appropriate
3 defendant for the death penalty can you personally do it?

4 A That's hard to answer if you have never been
5 in that position.

6 Q I know it is.

7 A I think I could if I was certain in my mind
8 that he had committed the murder.

9 Q That he committed the murder?

10 A That he deserved that penalty.

11 Q When you say "deserved that penalty", you mean
12 not only "committed the murder" but also you had decided
13 beyond a reasonable doubt that he was going to be
14 dangerous in the future?

15 A Yes, sir.

16 Q And then went on to Special Issue #2 and this
17 Special Issue #2 is just strictly going to be kind of
18 your opinion?

19 A Yes.

20 Q Your opinion after answering, after looking at
21 Special Issue #2 you have decided there is just not any
22 mitigating circumstances there and you are going to have
23 to answer it "No", if you made that decision in your mind
24 and could you do it knowing what the result of your
25 answer would be?

1 A I think I could.

2 MR. TOWNSEND: May I have a
3 moment, Your Honor?

4 THE COURT: You may.

5 MR. TOWNSEND: Ms. Lee, I have
6 noticed on your questionnaire that you mentioned that you
7 knew Mr. Old?

8 THE POTENTIAL JUROR: Yes.

9 Q (BY MR. TOWNSEND) The other attorney that is
10 working in this case, Lance Hinson, do you know him also?

11 A No, sir. I don't.

12 Q Okay. How do you know Mr. Old?

13 A I work at a local bank here and I helped him
14 with business in the bank.

15 Q Okay.

16 A And especially knowing him from there, we also
17 have mutual friends.

18 Q Let me ask you this and only you are going to
19 know the answer to it; do you visit in his home, for
20 instance?

21 A No. I have never been to his home.

22 Q Does he visit in your home?

23 A No.

24 Q Does the fact that you have -- that you have
25 some sort of acquaintance or friendship with him in the

1 bank, the fact that you have mutual friends, would this
2 give you problems in this case? Would you have a hard
3 time not leaning to one side or the other, would you lean
4 to his side because of your acquaintance or friendship
5 with him?

6 A No.

7 Q And do you feel certain in your mind that this
8 would not be a problem, you wouldn't mind seeing him in
9 the bank two weeks after the trial is over if it didn't
10 come out the way he wanted it to?

11 A No.

12 Q It wouldn't cause you a problem?

13 A No.

14 MR. TOWNSEND: I pass the
15 witness, Your Honor.

16 THE COURT: Ma'am, would you
17 like a break or are you ready to proceed with the
18 Defense?

19 THE POTENTIAL JUROR: I'm
20 fine. Thank you.

21 THE COURT: Mr. Old.
22
23
24
25

VOIR DIRE EXAMINATION

BY MR. OLD

1
2
3
4 Q Ms. Lee, you were asked questions about if you
5 could answer questions based on the premise of beyond a
6 reasonable doubt?

7 A Yes.

8 Q In the trial of this case that is -- there is
9 a fairly simple explanation of the trial of a case; His
10 Honor the Judge is the Judge of the law in this case, he
11 decides on the law, the facts are strictly in the
12 province of the jury, that is what facts are found?

13 A Yes.

14 Q In giving you the law the Court gives you a set
15 of written instructions, which have you been on a jury
16 before?

17 A Never have.

18 Q The Court instructs you on the law in writing,
19 you said you could make findings beyond a reasonable
20 doubt, the law has a special definition of the term
21 "beyond a reasonable doubt", as your oath will imply as
22 a juror you must make your decision in this case based
23 on the law.

24 A Yes.

25 Q And what that means is you have to accept the

1 Court's definition of a word, if he gives you a
2 definition that is saying that the word has a special
3 legal meaning and you are to use this definition and not
4 your own definition if it be different?

5 A Right.

6 Q Okay. As to the words "beyond a reasonable
7 doubt", I anticipate the Court will instruct you similar
8 to what I'm getting ready to read, "It is not required
9 that the prosecution prove guilt beyond all possible
10 doubt, it is required that the prosecution prove
11 excluding all reasonable doubt concerning the defendant's
12 guilt, a reasonable doubt is a doubt based on reason and
13 common sense after a careful and impartial consideration
14 of all the evidence in the case. It is the kind of doubt
15 that would make a reasonable person hesitate to act in
16 the most important of his own affairs. Proof beyond a
17 reasonable doubt, therefore, must be proof of such a
18 convincing character that you would be willing to rely
19 and act upon it without hesitation in the most important
20 of your own affairs."

21 I do not know what you thought prior to
22 today "beyond a reasonable doubt" meant, if you had a
23 definition in your mind or it had a meaning to you that
24 is different from that can you follow the Court's
25 instruction on setting the burden of proof which is

1 beyond a reasonable doubt?

2 A Yes.

3 Q I mean can you go back to that definition and
4 say "Whether I agree with it or not I'm going to use that
5 as a standard in this case?"

6 A I think I could. Yes.

7 Q You told Mr. Townsend that if you had a problem
8 with anything based on what you knew before coming to
9 Court today it was the age of the Defendant?

10 A Yes.

11 Q And you have two teenage sons?

12 A Yes.

13 Q And that caused you to relate to the Defendant?

14 A Yes.

15 Q In the questions that Mr. Townsend asked you
16 about as to what he has marked "Special Issue #2" it asks
17 you to take into consideration all of the evidence,
18 including the circumstances of the offense, the
19 defendant's character and background and the personal and
20 moral culpability of the defendant, it asks you then if
21 there is sufficient mitigating circumstances that a
22 sentence of life would be more appropriate than that of
23 death.

24 Do you consider age alone to be a
25 mitigating circumstance?

1 I'm not asking you whether or not you
2 would go one way or another based solely on age but would
3 you consider the age as evidence of mitigation?

4 MR. TOWNSEND: Your Honor, I'm
5 going to object to that. I think he's asking her to
6 commit at this time.

7 THE COURT: Overruled.

8 Ma'am, he's not trying to commit you one
9 way or the other, he just wants to know if it's one of
10 the factors that you would be willing to consider when
11 you decide whether or not there is a reason to spare a
12 persons' life?

13 THE POTENTIAL JUROR: I don't
14 think that that would keep me from making a decision I
15 would make otherwise due to his age. I think it's just
16 -- I guess because it's closer to home for me at this
17 particular time in my life and I have never been through
18 this but I do think that if without a reasonable doubt
19 in my mind that he had committed, I don't think that
20 would keep me from doing what needed to be done.

21 MR. OLD: I'm going to quarrel
22 with you a moment.

23 THE POTENTIAL JUROR: All
24 right.

25 Q (BY MR. OLD) I don't think you are

1 understanding my question.

2 A Okay.

3 Q I'm not asking if you would base your verdict
4 merely upon his age if proven?

5 A Right.

6 Q I'm asking you if the age would be evidence
7 that you would consider as mitigating evidence.

8 I'm not saying you would find a
9 particular answer based on it but it is something that
10 you would give your independent -- your deliberation?

11 A That I would consider?

12 Q Yes.

13 A No. I don't think so.

14 Q You would not consider age as a mitigating
15 factor?

16 A So, in other words, if I were deciding between
17 -- you think that might -- I might -- that might prevent
18 me from giving him the death penalty over life
19 imprisonment, is that what you are saying?

20 Q I'm asking you if it's evidence that you would
21 consider in reaching that decision?

22 A I honestly don't think his age would keep me
23 from -- no. I don't. I don't think that it would.

24 Q I mean you are saying that age if part of the
25 evidence?

1 A Sir?

2 Q If age if proven to you in the trial of a case
3 -- okay, you are saying that you would reject that as
4 evidence in mitigation?

5 A Well, I'm not saying I would reject it as
6 evidence but I don't think it -- I would -- I don't think
7 it would have bearing on my decision.

8 Q Would you consider it in reaching your
9 decision?

10 A No.

11 Q Would you consider evidence of intoxication or
12 something like that as being a mitigating circumstance?

13 A Yes.

14 Q Excuse me, Ms. Lee.

15 In those written instructions you will
16 receive an instruction to the effect as stating a
17 presumption of innocence and that is to say that all men
18 are presumed to be innocent and no person may be
19 convicted of an offense unless each element of the
20 offense is proved beyond a reasonable doubt.

21 The fact that a person has been
22 arrested, confined or indicted for or otherwise charged
23 with the offense gives no rise to inference of guilt at
24 his trial.

25 The Court will further instruct you that

1 the law does not require the person charged with a crime
2 to prove his innocence or to produce any evidence at all
3 and that the presumption of innocence alone is sufficient
4 to acquit a defendant unless you are satisfied beyond a
5 reasonable doubt of the guilt after your deliberation.

6 May I approach the witness?

7 THE COURT: You may.

8 MR. OLD: You have been asked
9 to examine the State's Exhibit 3 which is a copy of the
10 indictment in this case.

11 THE POTENTIAL JUROR: Yes.

12 Q (BY MR. OLD) Have you ever been on a Grand
13 Jury?

14 A No, sir.

15 Q Has anyone close to you ever been on a Grand
16 Jury, your husband or friends?

17 A No, sir.

18 Q Do you know anything about Grand Juries or
19 their procedures?

20 A No.

21 Q Can you just totally lay aside in making your
22 findings in this case beyond a reasonable doubt the fact
23 that the document, State's Exhibit 1 exists as any
24 evidence and that is the fact that this man has been
25 charged with a crime, can you totally lay that aside?

1 A Yes. Yes.

2 Q Do you understand that the purpose of an
3 indictment is merely to comply with the law and to comply
4 with the Constitution of the United States in that he
5 must have a definite written charge in order to accuse
6 anybody of anything?

7 A Okay.

8 Q The State can just not verbally say, "He
9 committed murder and we want to try him", you must allege
10 what it is in a specific manner that he did?

11 A Right.

12 Q And the fact that a Grand Jury indicted this
13 man is evidence of nothing to you?

14 A I think I could. Yes.

15 Q You say you "think you could?"

16 A Yes.

17 Q You could lay it aside?

18 But the question is is this evidence of
19 anything that would go to your finding beyond a
20 reasonable doubt in this case?

21 A No.

22 Q Back to the presumption of innocence; it tells
23 you that a person charged with a crime does not have to
24 defend himself?

25 A Right.

1 Q If -- I believe the example the Judge used the
2 other day, if Mr. Wardlow and I sat here and worked
3 crossword puzzles we were entitled to do that, we didn't
4 have to do anything?

5 A Right.

6 Q Just presume with me in the trial of a case,
7 not this case but any case that -- I'm not going to use
8 "crossword puzzles", I think that might offend a juror,
9 if the defendant remains silent?

10 A Yes, sir.

11 Q And to the extent that the State put its case
12 on and the defendant put no evidence on, whether he chose
13 to testify or not or called other witnesses, he has
14 offered you no evidence and there existed in your mind
15 a doubt based upon reason, which is a shorthand rendition
16 of "beyond a reasonable doubt", would you not consider
17 the fact that the defendant did not get up and at least
18 raise his right hand and swear to you "I didn't do it?"

19 A I would base the decision on what I had heard,
20 that's all I could do.

21 Q "What you had heard?"

22 A Yes.

23 Q But the question really is; would the fact that
24 the defendant did not take the opportunity to rebut the
25 State's case by testifying or by calling witnesses, would

1 that create a prejudice in your mind to his side of the
2 case?

3 There aren't any right or wrong answers
4 to this and I mean, you know --

5 A Right. That is hard to answer. I don't think
6 I would, you know, but I don't know.

7 I would presume if he were innocent he
8 would want to defend himself.

9 Q You would presume that?

10 A That's what I would think. But I would have
11 to base my opinion as a juror on the evidence that was
12 presented whether that came into the picture or not, Mr.
13 Old, you know -- I honestly don't know.

14 Q I know you don't know because you have not done
15 this and I'm not making fun of you.

16 A I understand that.

17 Q Do you think that there is a chance that in
18 that situation that could, the fact that he didn't
19 testify influence your verdict?

20 A I don't think so. I still think I would have
21 to base my verdict on what I had heard.

22 Q Now, oftentimes lawyers call that a "legal
23 fiction", that is if you are instructed to do something
24 that might be against what we all ordinarily do.

25 I presume in dealing with your two

1 teenage sons if they come home late and mother says to
2 them, "Why are you all late?"

3 And if their answer was "I take the
4 Fifth Amendment" on violence, you certainly would in your
5 judgment as a mother judge that fact against them?

6 A Right.

7 Q "Right?"

8 A Yes, sir.

9 Q I mean it's human nature to do that?

10 A Yes.

11 Q The question is whether you can lay aside that
12 human nature and tendency in the trial of this case, if
13 you will not let that be an indication of anything to
14 you.

15 I mean, you know, I'm asking you if you
16 think you can or cannot do it.

17 And I mean I think you are giving a lot
18 of consideration to this, there's not a right or wrong
19 answer, the fair answer is what you think you would do.
20 Can you tell me?

21 A I think I could. Yes.

22 THE COURT: Ma'am, you keep
23 using "think" and we are going to talk to you until we
24 get it out.

25 THE POTENTIAL JUROR: I

1 understand. I don't mind that. It's just some of this
2 like he says, it's speculation, what you think you would
3 do and when you haven't been in that situation -- some
4 of this is hard for me to definitely say "Yes" or "No",
5 that's all I'm saying.

6 MR. OLD: Ms. Lee, are you
7 telling me that you could not tell me the answer to that
8 with any degree of certainty?

9 THE POTENTIAL JUROR: Mr. Old,
10 all I am saying is that I do not think -- I do think I
11 would think over that. I don't think it would make a
12 difference in my decision.

13 Q (BY MR. OLD) But you would -- at least it
14 would be in your mind?

15 A Yes, sir. It would be. That's right.

16 Q And you think you could lay it aside but you
17 are not sure?

18 A That's right.

19 Q Ms. Lee, in the trial of a case the State is
20 as part of their case offers into evidence a statement
21 made by the defendant under certain circumstances the
22 voluntary nature of that statement is a decision that a
23 juror has to make.

24 The question is not whether or not you
25 believe the statement to be true, it's whether or not

1 under those circumstances it was in fact a voluntary
2 statement. And what a juror is told to do and how the
3 Court would instruct you on the law pertaining to
4 statements or confessions would be "You are instructed
5 that under our law a confession of a defendant made while
6 the defendant was in jail or other place of confinement
7 or in the custody of a peace officer shall be admissible
8 in evidence if it appears that the statement was freely
9 and voluntarily made without compulsion or persuasion"
10 and that it goes on to tell you other things that the
11 State must prove to you for it to be voluntary, as in the
12 guilt and innocence and as to punishment issue hereto you
13 make your finding beyond a reasonable doubt?

14 A Right.

15 Q Okay. Then after the Court goes through
16 instructing you as to what must be found for you to find
17 it is voluntary the Court will instruct you that "Unless
18 you so find or if you have a reasonable doubt thereof you
19 will not consider the statement or confession for any
20 purpose whatsoever or any evidence obtained as a result
21 of the same."

22 And presume with me a document is
23 offered which the State intends or alleges is a statement
24 by the defendant and it comes into evidence. Then you
25 are asked if it is voluntarily made, you are not asked

1 if it's true or untrue, you are asked first to find
2 whether or not it was voluntary. The truth of the
3 statement is not the issue at that time and after, of
4 course you will know when you are making your findings
5 you will know what the statement says.

6 If you found that it was not voluntary
7 would you totally lay aside that statement and evidence
8 that was produced from that statement?

9 A Yes.

10 Q Even though you believed it to be true. Truth
11 is not the issue, voluntariness is the issue.

12 A Yes.

13 Q You could lay it aside?

14 A Yes. Yes, sir.

15 Q I would like to ask you a question about
16 lawyers and in considering the answer to this question
17 remember that Mr. Townsend while a prosecutor is still
18 a lawyer, I am just a lawyer, he's a prosecuting lawyer;
19 during the trial of the case the job of a lawyer is to
20 make objections to evidence or procedures and this is
21 what we are trained to do and that is part of -- we are
22 charged with that duty in our profession.

23 Upon occasion it may be necessary to
24 determine whether or not certain evidence is admissable
25 and that His Honor takes those matters up outside of your

1 presence, that is you would be sent to the jury room or
2 perhaps even excused from the courthouse for some period
3 of time.

4 A lot of people say that that bothers
5 them because we are hiding something from them, as a
6 juror they think they out to be entitled to be present
7 and find out what is going on. That is one of those
8 things I'm not sure you could tell me for sure how you
9 feel until it happens but I'm asking you to tell me
10 whether or not those instances if they occur in this
11 trial, that is knowing the Court was hearing something
12 without you, would influence your verdict in this case?

13 A No, sir.

14 THE COURT: Twenty-five
15 minutes.

16 MR. OLD: Okay. I believe if
17 I am correct on your questionnaire that you were raised
18 in the Episcopal Church and after you were an adult you
19 became a member of the Church of Christ?

20 THE POTENTIAL JUROR: Yes,
21 sir.

22 Q (BY MR. OLD) Is there anything in your
23 religious thinking or background -- I'm not implying to
24 a particular doctrine of the Church of Christ or
25 Episcopal Church, I'm not talking about anybody's beliefs

1 but is there anything in that background that goes to
2 capital punishment, whether you are for or against it?

3 A No.

4 Q Your answer to the question on capital
5 punishment is simply the first one, "Are you in favor of
6 the death penalty?"

7 And you answer "Yes" and you are given
8 an opportunity to explain.

9 A Yes.

10 Q You offered no explanation?

11 A Yes.

12 Q Then in the next question you were to circle
13 which statement best represents your feelings and you
14 circled I believe that the death penalty is appropriate
15 in some murder cases and to return a verdict in a proper
16 case which assessed the death penalty.

17 You are at least 29 years of age?

18 A Yes, sir.

19 Q Has that been your opinion all of your life,
20 have you changed on this issue from one side to the
21 other?

22 A No. That's basically the way I have always
23 felt.

24 Q When I say "All of your life" I am certainly
25 not talking -- I'm talking about all of your adult life,

1 at the age you became into thinking of this.

2 A Yes, sir.

3 Q You have never changed from one side of that
4 issue to the other?

5 A No, sir.

6 Q As to peace officers, police, law enforcement
7 officers, whatever you want to call them, Mr. Townsend
8 asked you if any witness could have a head start over
9 another one perhaps because of what he did for a living.

10 My question is simply this; is the fact
11 that the man wears a badge or uniform, does that give him
12 any degree of credibility with you?

13 On the starting line are you saying
14 "Yes" it does give --

15 A As far as this trial it doesn't give him
16 credibility of him over someone else. No.

17 Q I haven't asked you "this trial" yet.

18 A Okay.

19 Q I'm talking about in general?

20 A In general, in everyday life?

21 Q Yes.

22 A Does that give that person automatic
23 credibility?

24 Q Yes.

25 A If they have a badge?

1 Q Or more than someone that does not wear one,
2 a total stranger to you?

3 A Yes.

4 Q Now, assuming that Mr. Wardlow testified in
5 this case and assuming that, you know, that he's the
6 person charged with a crime and, you know, whatever has
7 been offered as evidence up to this point that the peace
8 officer testifies, is that peace officer going to have
9 more credibility with you when he testifies than Mr.
10 Wardlow?

11 The Court will in his charge tell you
12 that you are the exclusive judge of the witness and the
13 weight to be given their testimony.

14 Is the fact that he's a peace officer
15 alone going to have credibility in weighing the other?

16 A No.

17 Q It would not be -- have to be proven to you
18 that he's a bad peace officer or incompetent peace
19 officer or a not so well trained peace officer before his
20 credibility would be lowered to that of another witness?

21 A No.

22 Q You were asked for your personal opinion about
23 the criminal justice system, you answered, "I think it's
24 not hard enough on offenders."

25 Is that based upon general knowledge or

1 is -- does that refer to a specific set of circumstances
2 that you are aware of?

3 A That is strictly general.

4 Q And how is it more specifically that the
5 criminal justice -- first, what is the "criminal justice
6 system", what do you define it as being?

7 A May I -- our system of laws to enforce crimes
8 that are made.

9 Q Would it be the law, the courts, the appellate
10 courts?

11 A Pardon me?

12 Q The law itself, the court -- would the court
13 be part of the "criminal justice system?"

14 A Yes, sir. The whole system. Yes.

15 Q The penal institutions?

16 A Yes, sir.

17 Q If a person is found guilty of capital murder
18 and the issues are not answered in a fashion to result
19 in a death sentence then the sentence is life, you
20 understand that?

21 A Yes, sir.

22 Q Do the words "pardon and parole", are they part
23 of the criminal justice system so far as you are
24 concerned?

25 A What? I'm sorry.

1 Q The Board of Pardons and Paroles?

2 A Okay.

3 Q Are they part of that criminal justice system
4 that you do not think is hard enough?

5 A Yes, sir.

6 Q Are you dissatisfied with at least what is
7 reported to you by the newspaper about the length of time
8 people actually serve on what appears to be long
9 sentences?

10 A Yes, sir.

11 Q Do you have any preconceived idea of what --
12 of what percentage of a sentence a defendant may serve
13 based on what you have read or heard?

14 A No. Not really. No, sir.

15 Q Assume with me in that the law of this State
16 is and that you will be charged with this at least when
17 we get to the punishment phase of this trial that a life
18 sentence for capital murder before you become eligible
19 for a parole that you must serve 40 years and if you are
20 going to assume with me if this is 1994, you add 40 to
21 it and you are not eligible to be even considered for
22 parole until you reached -- what would that be, "2034?"

23 A "'34."

24 Q "'34?"

25 A Yes.

1 Q Okay. In knowing that and assuming with me
2 that is correct, going back to Special Issue #2 and you
3 are being asked if there is a sufficient mitigating
4 circumstance or circumstances to warrant that, a sentence
5 of life imprisonment rather than the death sentence be
6 imposed --

7 MR. TOWNSEND: Your Honor, I
8 want to object. I believe Special Issue #2 and parole
9 are related in any way. I don't believe that is
10 relevant.

11 THE COURT: The objection is
12 sustained.

13 MR. OLD: Do you understand
14 that -- probably you don't, I don't remember if the Judge
15 talked about it the other day or not, lesser and included
16 offenses that he will probably -- you may be asked in
17 this case if the evidence supports the submission of it,
18 the law as to whether or not he's guilty of capital
19 murder, the lesser included offense of murder, which I
20 think Mr. Townsend referenced to a "plain murder" or
21 "simple murder" and on down through voluntary
22 manslaughter and getting down to the bottom of what could
23 be charged.

24 I'm not telling you it will be, it will
25 be what the facts would raise.

1 THE POTENTIAL JUROR: Right.

2 Q (BY MR. OLD) That would give rise to a range
3 of punishment from a five year probated sentence to a
4 conviction of capital murder of a death sentence.

5 Now, in considering the range of
6 punishment up into murder, murder is punishable by a term
7 of up to life as opposed to simple murder if that clears
8 it -- versus capital murder or let's say non-capital
9 murder, can you consider the full range of that
10 punishment? Can you give a man a life sentence for
11 murder?

12 A Yes.

13 Q And that's simply the intentionally or
14 knowingly killing someone?

15 A Right.

16 Q As to your views on the criminal justice
17 system, are you dissatisfied with this system because you
18 believe there's not enough death sentences rendered and
19 carried out?

20 A That's not necessarily the reason I feel that
21 way.

22 Q That's not?

23 A No.

24 Q In determining mitigation on Special Issue #2
25 would you take into consideration Mr. Wardlow's family

1 history?

2 A No.

3 Q You would not?

4 A I don't think I would.

5 Q If he had --

6 THE COURT: Mr. Old, before
7 you go any further; I don't have a problem with the
8 question, I have a problem with the question being
9 directed toward your client.

10 MR. OLD: Your are correct.

11 If the person who was on trial had a
12 troubled family history or background would you consider
13 that evidence of mitigation? Is that something that you
14 would consider in answering Special Issue #2?

15 THE POTENTIAL JUROR: No.

16 MR. OLD: Can I have just a
17 moment, Your Honor?

18 THE COURT: You may.

19 You have about eight minutes left.

20 MR. OLD: As to what you told
21 us earlier on as to the relationship, you having teenage
22 sons and what you believe Mr. Wardlow's age to be, if I'm
23 understanding you correctly that makes you uneasy sitting
24 in this case, would that substantially impair the
25 performance of your duty as a juror if selected?

1 THE POTENTIAL JUROR: There
2 again, that is hard to answer. I don't think it would.
3 I don't think it would impair my decision but it might
4 bother -- you know, I can't say it wouldn't be on my mind
5 but I think it would anyone on the jury.

6 MR. OLD: Your Honor, that's
7 all we have at this time.

8 THE COURT: Thank you, ma'am.
9 I don't know where you have been waiting
10 but I would like for you to go back where that is and I
11 will bring you back out in a few moments for some more
12 instructions.

13 THE POTENTIAL JUROR: Okay.

14
15 (The following occurred outside the
16 presence and hearing of the potential juror:)

17
18 THE COURT: Does the State
19 have any challenges, please?

20 MR. TOWNSEND: No, Your Honor.

21 THE COURT: Does the Defense
22 have any challenges?

23 MR. OLD: Your Honor, we would
24 challenge her for cause in that she has clearly stated
25 that she would not consider age, troubled family history

1 or his family history as evidence that would go to
2 mitigation.

3 THE COURT: Okay.

4 MR. OLD: And the fact that
5 she could not with a degree of certainty tell us that
6 she would not consider the fact that a man did not
7 testify or present evidence on his own behalf.

8 THE COURT: Okay. Any further
9 challenges, please?

10 MR. OLD: That's all.

11 THE COURT: Let's go off the
12 record.

13
14 (Off the record discussion.)

15
16 THE COURT: Let's go ahead and
17 get on the record.

18 The Court proposes that when we finish
19 questioning or when the attorneys finish questioning a
20 juror I will consider any challenges for cause that are
21 made by either side. If the Court has a concern or is
22 not sure on one of the issues raised by either side then
23 the Court will bring the juror back for further
24 interrogation by the Court.

25 If the Court is still not satisfied the

1 Court may invite Counsel to question the juror further.

2 It will normally be my policy not to let
3 the lawyers talk to the juror any further unless I am
4 still unclear, if I do not invite either side to further
5 question the juror and you believe that you do need to
6 question this juror further request permission, I will
7 either grant or deny at that time.

8 As far as rebuttal time or additional
9 questions, sometimes I will consider it, I don't really
10 have any guideline upon you for limits, I would think
11 probably five, six minutes per challenge would be
12 sufficient.

13 Mr. Townsend, do you have any objection
14 to the procedure?

15 MR. TOWNSEND: No objection,
16 Your Honor.

17 THE COURT: Mr. Old?

18 MR. OLD: I don't object to
19 the procedure.

20 THE COURT: Let's bring back
21 Ms. Lee.

22
23 (State's Voir Dire Exhibit Number 6 was
24 marked for identification.)
25

1 THE COURT: Let's get on the
2 record.

3 The Court has tendered to both sides the
4 definition of "reasonable doubt", it has been marked as
5 "State's Exhibit 6", even though the Court provided it
6 we are marking it as a "State's exhibit" just to keep it
7 in order with all voir dire exhibits.

8 Does either side have an objection to
9 State's Exhibit 6 which is the Court's definition of
10 reasonable doubt based on statute?

11 MR. OLD: With the definition
12 of "presumption of innocence?"

13 THE COURT: With the
14 definition of "presumption of innocence" as part of this
15 reasonable doubt definition.

16 MR. TOWNSEND: No objection,
17 Your Honor.

18 THE COURT: Any objection, Mr.
19 Old?

20 MR. OLD: No objection.

21 THE COURT: It is admitted.

22
23 (State's Voir Dire Exhibit Number 6 was
24 received in evidence.)
25

1 (The following occurred in the presence
2 and hearing of the potential juror:)

3
4 THE COURT: Ms. Lee, if you
5 would please go ahead and take your seat. I have a
6 couple of questions for you.

7 First, I appreciate your flexibility,
8 we have set you several times and had to reschedule you
9 and I do appreciate your cooperation.

10 Now, ma'am, when you talked with the
11 lawyers there were a couple of areas that you went over
12 that I'm not clear about, frankly.

13 Now, I told you at one point in time we
14 are going to try to push you until we get a position one
15 way or another.

16 THE POTENTIAL JUROR: Yes.

17 THE COURT: I don't like to
18 do that but in order to make sure both sides have a fair
19 trial we have to know where a person stands.

20 You talked about two areas and that's
21 what you would and would not consider in evidence of
22 mitigation and whether you would or would not consider
23 failure to testify, those are the two areas I want to
24 talk to you about.

25 Let's talk first about testifying, now,

1 as I told you and the entire group when we started
2 talking a person has the right to either testify or not
3 testify if he's charged with a crime, you said that you
4 would presume that if a person was innocent he would
5 defend himself?

6 THE POTENTIAL JUROR: Right.

7 THE COURT: Does that mean if
8 he doesn't testify that you may presume that he's guilty?

9 THE POTENTIAL JUROR: No, sir.

10 No.

11 THE COURT: All right. You
12 said that you don't think you would consider and that you
13 wouldn't let it influence your decision but you would
14 wonder, what do you mean "you would wonder", are you
15 telling me you would wonder why he did not testify?

16 THE POTENTIAL JUROR: Yes,
17 sir. I think that's what I meant and I think that's
18 human nature to do that.

19 THE COURT: I agree.

20 You will have to take an oath if you are
21 on this or any other jury, the oath will be to base your
22 verdict on the law and the evidence.

23 THE POTENTIAL JUROR: Yes,
24 sir.

25 THE COURT: The law says if

1 a person chooses not to testify you cannot consider it
2 as any evidence for or against him, it's just
3 nonexistent.

4 THE POTENTIAL JUROR: Right.

5 THE COURT: He's there but
6 there's nothing to consider.

7 THE POTENTIAL JUROR: Right.

8 THE COURT: Of course the law
9 says there's nothing to consider and since he didn't
10 testify there is nothing to consider.

11 Would you be able to follow that
12 direction and base your verdict only on the testimony you
13 did hear?

14 THE POTENTIAL JUROR: Yes,
15 sir.

16 THE COURT: If you were a
17 juror in a criminal case and the defendant did not
18 testify and you believe that the evidence proved that he
19 was probably guilty but you are not convinced beyond a
20 reasonable doubt, you think he probably is but as you
21 have been told "Probably is not sufficient", you have to
22 be convinced beyond a reasonable doubt?

23 THE POTENTIAL JUROR: Right.

24 THE COURT: You think he's
25 probably guilty and he did not testify, would that fact

1 be enough then for you to say, "Well, I'm not sure he's
2 guilty but he didn't testify so he must be guilty so
3 therefore I'm going to find him guilty?"

4 THE POTENTIAL JUROR: No, sir.
5 No. If I didn't -- if I wasn't sure he was not guilty
6 anyway --

7 THE COURT: You would not find
8 him guilty just because he didn't testify himself?

9 THE POTENTIAL JUROR: Right.
10 That would not be the reason.

11 THE COURT: So you are telling
12 me, ma'am, that you would be curious, you would want to
13 know but you would set that, your curiosity aside and
14 base your verdict on the evidence that you hear?

15 THE POTENTIAL JUROR: That's
16 correct.

17 THE COURT: Let's talk about
18 this mitigation for a moment; before you get to the two
19 issues that are before you, the Special Issue asking you
20 whether or not the person would be dangerous and then
21 asking you whether or not there is a reason to spare his
22 life you would have already found a person guilty of
23 capital murder.

24 THE POTENTIAL JUROR: Right.

25 THE COURT: Those issues don't

1 even come up until punishment so in punishment the Court
2 basically says, "Step back, take a look at the facts,
3 take a look at everything you know and then decide
4 punishment."

5 Mitigation is defined as evidence that
6 a juror might consider as reducing the moral
7 blameworthiness, not just forgiving or excusing the act
8 but maybe reducing the moral blameworthiness, maybe he's
9 not quite as blameworthy for this reason or that reason
10 as another person would be.

11 For instance, on family background it
12 could be good or bad family background, you might have
13 a person on trial that has had the best education, the
14 best upbringing and that might be something that you
15 would consider as, "My gosh, you know, as good a
16 background as he has he has no excuse."

17 You might have somebody that has bad
18 family background that has been abused all of his life
19 or early life and you might consider that as some reason
20 what the person did, why the person did it and in the law
21 it doesn't tell you what you have to consider or don't
22 have to consider.

23 You said that you wouldn't consider age
24 or background as mitigating, as to age, I don't want you
25 to look at Mr. Wardlow and think, "Oh, this is the case

1 we are talking about", but the law in general, it could
2 be an 80 year old person on trial in a capital murder,
3 you might take this person's age in consideration instead
4 of having him or her executed you would give him a life
5 sentence, you might have somebody on trial that is 16
6 years old and is certified to be an adult, that may be
7 a young age that you might think because of the young age
8 maybe a life sentence would be appropriate.

9 The law doesn't really tell us what is
10 and isn't mitigating. It states if you hear evidence and
11 that evidence tells you basically in your heart this
12 isn't a death case, can you give effect to that evidence
13 without turning out any evidence about age or family
14 background or would you listen to it and if it did
15 influence you one way or another act on it or are you
16 just saying "I don't care what the background is, I don't
17 care what the age is, it will not effect my answer to
18 whether or not his life should be spared."

19 We are talking about whether a life
20 should be spared when we get to two, you have already
21 decided Issue #1, you have found he's a danger so at that
22 point it's kind of a safety valve, "Is there any reason
23 at all to spare this person's life?"

24 THE POTENTIAL JUROR: I think
25 there could be some reason but I do not think that family

1 background or age would be sufficient reason.

2 THE COURT: But if you hear
3 something that you thought was sufficient?

4 THE POTENTIAL JUROR: I'm not
5 saying it's just cut and dried, there could be some
6 reasoning.

7 THE COURT: Thank you, ma'am.
8 You may step down and I probably will
9 not be able to tell you this week whether or not you are
10 on the jury but if you would go back to wherever --
11 Sheriff, where are you keeping them?

12 THE BAILIFF: In the lounge
13 here. (Indicating)

14 THE COURT: If you will go
15 back to the lounge I will send you word as to what to
16 expect next.

17 THE POTENTIAL JUROR: I can't
18 leave?

19 THE COURT: You can go back
20 to work shortly but I can't tell you whether or not you
21 will be on the jury until next week but I will have more
22 instruction for you shortly through the Sheriff.

23
24 (The following occurred outside the
25 presence and hearing of the potential juror:)

1 THE COURT: I am satisfied
2 that the juror is qualified, I'm going to overrule both
3 challenges for cause.

4 Since this is the number two juror and
5 not the first juror on our list I will not ask the State
6 or Defense whether they do or don't accept the juror.

7
8 (Off the record discussion.)
9

10 THE COURT: Let's take a break
11 and then we will go to our next person.

12 On the record?

13 MR. TOWNSEND: Yes, Your
14 Honor. This is a letter that was sent to Mr. Old Friday
15 requesting from the Court at this time that Mr. Dunlap,
16 Mr. Bill Dunlap and Mr. Chris Sanders be added as
17 supplemental witnesses.

18 I told you I thought this letter was
19 sent Thursday, in fact it was sent Friday.

20 THE COURT: This was the
21 discussion we had prior to beginning voir dire.

22 MR. TOWNSEND: And the Offense
23 Report is attached. We had not sent him the Offense
24 Report previously either because we didn't have it.

25 THE COURT: Mr. Old, take a

1 look at that.

2 MR. OLD: So the record will
3 be clear; I have not even received it at this time.

4 THE COURT: I understand.

5 MR. TOWNSEND: I was thinking
6 it was mailed Thursday but it was mailed Friday.

7 THE COURT: I'm not going to
8 have Mr. Old state his position right now, I'm sure right
9 now he's going to oppose it.

10 Take a look at it and make your
11 objection in the morning if you have any.

12 MR. OLD: I think they need
13 a motion.

14 THE COURT: To add?

15 I agree.

16 MR. OLD: Before it could come
17 for consideration.

18 THE COURT: Unless you are
19 going to agree I agree with you, Mr. Old, that there
20 needs to be a motion to add to the Witness List before
21 these two witnesses will be considered by me as witnesses
22 and then of course I may or may not allow them to be
23 added. It depends on why they weren't listed and what
24 they are going to be witnesses for.

25 Let's go off the record.

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Everybody take a break.

(Recess.)

MICHAEL CLARK PREDDY, Potential Juror #3,
was called as a Potential Juror and, having been
previously sworn by the Court, testified as follows:

Good afternoon, sir, how are
you doing?

THE POTENTIAL JUROR: Fine.

THE COURT: Go ahead and take
a seat if you would.

Let me get your questionnaire out here;
you are "Michael Preddy?"

THE POTENTIAL JUROR: Yes,
sir.

THE COURT: Mr. Preddy, I am
Gary Stephens, I am presiding over the jury selection in
this case and the trial.

First I think you have been scheduled
a time or two and I appreciate you being so flexible with
us, we had some other matters and me going back and forth
from out of town didn't help so thank you for your
patience and hopefully now we can get this process done

1 and get you on your way.

2 Now, Mr. Preddy, today the lawyers are
3 going to talk to you about some laws, you have two
4 lawyers that are representing the State, you have the
5 District Attorney from Morris County, Mr. Richard
6 Townsend and you have the elected District Attorney that
7 will take office in January from Cass County, Mr. Randy
8 Lee.

9 MR. LEE: How are you doing?

10 THE COURT: Then there will
11 be two Defense Attorneys. In the courtroom we have Mr.
12 Bird Old, III, his partner for this case is Lance Hinson.

13 Will Lance join us this afternoon, Mr.
14 Old?

15 MR. OLD: Not this afternoon.

16 THE COURT: He probably won't
17 be with us but if you are a juror you will see him during
18 the trial.

19 Now, Mr. Preddy, I went over a lot of
20 law with all the jurors, the lawyers are going to revisit
21 some of those areas and they are also going to talk to
22 you about the questionnaire that you filled out.

23 There's no right or wrong answer, you
24 are not on trial, you are under oath, all the answers
25 being given are to be given truthfully but you are not

1 on trial and your opinions are not on trial.

2 Frankly, it does not matter what your
3 opinions are as long as you give us truthful opinions.

4 The lawyers are entitled to know
5 something about you and how you think so they can decide
6 whether or not this is an appropriate case for you.

7 Often we have jurors that are quite
8 qualified but because of some reason or another they may
9 just not be appropriate for a death penalty case and for
10 the lawyers to decide whether you are appropriate they
11 need to know more about you than we can get on the
12 questionnaire.

13 So, like I said, your opinions -- we are
14 not searching for answers, this is not a pop quiz, you
15 don't have to try to please or displease us. Tell us
16 what you think about these issues and we will decide
17 whether or not this is the kind of jury that you need to
18 be on.

19 If there's a question you don't
20 understand stop us and get us to clarify and if there's
21 anything you want to ask this is your time to do so
22 because if you are selected as a juror we can't talk to
23 you about the case after today.

24 Also during the interview you are not
25 having -- well, let me back up, we are not permitted to

1 talk about the facts of this case so if any examples are
2 given to illustrate a point don't assume that they are
3 talking about this case, we are talking to you about law
4 in general and the way it applies to the type of case but
5 we are not talking specifically about Mr. Wardlow or the
6 facts of his case.

7 Mr. Townsend.

8
9 VOIR DIRE EXAMINATION

10 BY MR. TOWNSEND

11
12 Q Mr. Preddy, I'm Richard Townsend, I represent
13 Morris County in this case and as the Judge says, there's
14 no right or wrong answers in these questions. We are
15 just strictly seeking and want to know what your opinion
16 is.

17 If you have any trouble understanding
18 me please be sure and let me know, if I'm not clear on
19 what I'm saying or if I'm mumbling or whatever.

20 I have read your questionnaire, I think
21 I have an understanding of how you feel about the death
22 penalty and I want to talk to you about capital murder
23 cases in general and about death penalty cases in
24 particular.

25 First in discussing, in looking at your

1 questionnaire I want to talk to you about a few things
2 I see on there, one I see, I notice that you know Mr.
3 Old?

4 A Yes, sir.

5 Q The other Defense Attorney in this case is
6 Lance Hinson, do you know him?

7 A I don't think so. The name isn't familiar.

8 Q How well do you know Mr. Old?

9 A I just know who he is.

10 Q The fact that you know Mr. Old, would that sway
11 you to one side or the other in this case or would you
12 be able to be fair and impartial without taking into
13 consideration the fact that you know Mr. Old?

14 A I would have no problem with it.

15 Q I note also in your questionnaire that you have
16 checked that you knew the victim in this case, Mr. Carl
17 Cole?

18 A Yes, sir.

19 Q The fact that you knew the defendant or knew
20 one of the attorneys involved and knew the victim does
21 not -- does not disqualify you, however we do need to
22 talk with you a little bit about, you know, about what
23 your knowledge of that victim is and that sort of thing
24 and we need fair and impartial jurors and to be a fair
25 and impartial juror you have got to be able even though

1 you know a person involved in a case, even though it be
2 a police officer or victim or whoever it is be able to
3 put that aside, the knowledge that you knew him, put that
4 aside and decide the case strictly on the evidence and
5 not say, "Well, I'm not sure that he's guilty but I knew
6 the victim here and somebody needs to pay for this."

7 Would you be able to put your knowledge,
8 whatever knowledge that is of the victim, would you be
9 able to put that aside and base this case and base your
10 decision in this case strictly on the evidence?

11 A Yeah.

12 Q How well did you know Mr. Cole?

13 A Not real well. I knew who he was, I had a deer
14 lease, I had to cross the end of his property to get into
15 it.

16 I stopped several times and talked to
17 him there and also I had been to his place to talk to him
18 about cows that had gotten out on the deer lease.

19 Q Is that the only knowledge that you had of him?

20 A Yes, sir.

21 Q You all weren't close friends or anything of
22 that nature?

23 A No.

24 Q You don't think that would cause you a problem
25 serving on this jury?

1 A I wouldn't think so. No.

2 Q Going back to murder; in Texas there are two
3 kinds of murder, there's what I'm going to just call
4 "plain murder" and that's where someone has intentionally
5 caused the death of an individual.

6 Now, that's not capital murder, that's
7 just murder. The punishment on that is five years
8 probation up to 99 years or life and that's to say a
9 murder that takes place intentionally without any legal
10 justification or excuse such as self defense or accident,
11 of course those aren't real murders, those are deaths or
12 homicides but it wouldn't be a murder if it was done in
13 self defense.

14 Do you understand me on that?

15 A Yes.

16 Q So we are talking about intentionally causing
17 someone's death but in order for that to be a capital
18 murder a person who is charged in Texas with just plain
19 murder or intentionally causing someone's death, they
20 cannot receive the death penalty, they can receive a life
21 sentence but not the death penalty.

22 In order to qualify for the death
23 penalty you have to be convicted of what we call "capital
24 murder", capital murder is murder as we talk about
25 intentionally causing someone's death plus the person

1 they murdered was a police officer killed in the line of
2 duty, it was a murder that took place during the
3 commission of a robbery, during the commission of a rape
4 or something of that nature.

5 So you have got murder plus another
6 crime involved with it, it's kind of basically what it
7 boils down to.

8 Do you feel like you understand the
9 difference between capital murder and what I'm just
10 calling "plain murder?"

11 A I think so.

12 Q And you understand the death penalty is only
13 possible in Texas if we have a capital murder?

14 A Right.

15 Q Okay. In order to seat jurors in this case or
16 any case we have to have those jurors who can be fair and
17 impartial in regard to law and in regard to all sorts of
18 evidentiary matters.

19 In a capital murder case -- first of all
20 let me --

21 Approach the witness, Your Honor?

22 THE COURT: You may.

23 MR. TOWNSEND: Let me show you
24 what is the indictment in this case and if you would just
25 read this portion right here and I will ask you a couple

1 of questions about it.

2 THE POTENTIAL JUROR: Okay.

3 Q (BY MR. TOWNSEND) Can you see where if the
4 State was to prove what was charged in that indictment
5 instead of being just a plain murder that would be a
6 capital murder?

7 A Right.

8 Q Based on the allegations in there regarding
9 robbery?

10 A Yes.

11 Q Okay. So that's the indictment in this case.

12 However, Mr. Preddy, you understand that
13 the indictment is merely a charging instrument, it's not
14 evidence?

15 A Right.

16 Q And the fact that a person has been indicted
17 by a Grand Jury is absolutely no evidence of guilt in a
18 trial and could you -- could you put that indictment
19 aside and base your finding in this case strictly on the
20 evidence presented and not be swayed or determine your
21 decision in any part on the fact that a person has been
22 indicted by a Grand Jury?

23 A Yes.

24 Q In a capital murder case the possible
25 punishments are life in prison or the death penalty.

1 In order to be a fair and impartial
2 juror we have got to have those jurors -- we have got to
3 have those type jurors who will first decide the person's
4 guilty or not guilty, once they have made that decision
5 a life sentence is not automatic, the death penalty is
6 not automatic.

7 We then have a punishment hearing. At
8 that punishment hearing there will be more evidence
9 presented and that evidence will tend to -- of course the
10 Defense will be trying to present evidence that would
11 make you want to give the defendant a life sentence, the
12 State on the other hand would probably be presenting
13 evidence that would make you feel that a person might
14 deserve the death penalty.

15 Could you wait and make your decision
16 on the death penalty after hearing all that evidence at
17 the punishment stage and not just based on the guilt or
18 innocence part?

19 A I feel like you have got to do everything
20 before you can make a rightful decision.

21 Q So you could wait and not just say "I found
22 this guy guilty of capital murder so I'm automatically
23 going to give him the death penalty?"

24 A No.

25 Q You could wait and hear all the evidence?

1 A Yes, sir.

2 Q In deciding the death penalty it's not just a
3 matter of hearing the evidence and saying, "Okay, how
4 many want to vote death, how many want to vote life", it
5 doesn't work that way.

6 The way it works in Texas you then go
7 back and decide Special Issues -- if you will there is
8 a sheet of paper up there, if you will look at it, looks
9 kind of like this, that's kind of a flow chart of how a
10 death penalty trial goes.

11 You go to the top, the guilt or
12 innocence, you hear the evidence, if the person is found
13 not guilty the trial is over, if the person is found
14 guilty you go to the punishment phase down in the middle
15 of the page.

16 A Yes, sir.

17 Q And then you are going to hear more evidence,
18 the evidence you hear, it might be from a psychologist
19 or psychiatrist, it might be from a family member, it
20 might be evidence of -- of other crimes that the person
21 may have committed, it could be just almost anything that
22 would -- that either the State or Defense might want to
23 use to convince you one way or the other about what the
24 appropriate punishment should be.

25 After you have heard all that evidence

1 you can consider that evidence and you also need to be
2 able to hear that evidence that you heard during the
3 guilt or innocence phase, just kind of reconsider it
4 again for purposes of punishment and you have got to
5 answer these Special Issues and we'll go over those in
6 just a minute.

7 But for right now you are going to
8 answer Special Issue #1, if you answer that issue "No"
9 then the defendant would automatically get a life
10 sentence.

11 A All right.

12 Q If you answer that Special Issue with a "Yes"
13 then the defendant -- then you go to Special Issue #2
14 and Special Issue #2 -- we'll go over it a little bit
15 also -- if you answer Special Issue #2 with a "No" that
16 then the defendant is going to receive the death penalty,
17 if you answer Special Issue #2 with a "Yes" then the
18 defendant is going to receive a life sentence.

19 So you are not saying "life or death",
20 you are answering specific questions "Yes" or "No."

21 Of course you are going to know what
22 those answers are going to cause or you would know that
23 the answer to Number One "Yes" and Number Two "No" then
24 the defendant is going to receive the death penalty. If
25 you answer them any other way then the defendant would

1 receive a life sentence, are you with me so far?

2 A Yes, sir.

3 Q Okay. There is another sheet up there that
4 looks like this, it -- it's going to say "Special Issues"
5 on the top.

6 Have you got that? (Indicating)

7 A Yes.

8 Q If you will read Special Issue #1 then I will
9 talk to you about that.

10 A Okay.

11 Q Okay. Special Issue #1 I'm going to tell you
12 what it means to me and you tell me if you agree with
13 that or if it means something different to you but
14 basically to me Special Issue #1 just talks about the
15 future dangerousness of that defendant.

16 A That's what it sounds like. Yes, sir.

17 Q We'll go over a couple of things with you,
18 first of all in that Special Issue #1 the State just like
19 they are required to prove guilt beyond a reasonable
20 doubt, we are also required to prove Special Issue #1
21 beyond a reasonable doubt so basically the State has to
22 convince you based on the guilt or innocence evidence and
23 based on the evidence that you heard during the
24 punishment phase that the person -- that there is a
25 probability that he would commit criminal acts of

1 violence in the future that would constitute a threat to
2 society.

3 Now, Mr. Preddy, what we are doing here,
4 you are not going to be required to guarantee that he
5 would commit the further act of violence and you are not
6 even required to predict that he would commit further
7 acts of violence but you are to determine whether it's
8 probable or not.

9 Are you with me so far?

10 A Yes, sir.

11 Q I'm going to point out a couple of sentences
12 in here, one is this word "probability", and I think you
13 know what that means but again you are not required to
14 predict it or guarantee it, just the probability.

15 And this term "criminal act of
16 violence", what this defendant is on trial for in a
17 capital murder case is a murder, of course, but a
18 criminal act of violence doesn't have to be a murder, it
19 could be an assault, it could be a rape, it could be, you
20 know, any type of violent behavior so we are not required
21 to show you it's probable that he would commit another
22 murder, just that he would commit some other criminal act
23 of violence.

24 Are you with me on that?

25 A Yes, sir.

1 Q Now, if you will now read Special Issue #2 and
2 then I will talk to you about that, it's a little bit
3 more wordy.

4 A Okay.

5 Q Okay. Let me tell you what that one means to
6 me and you can agree or disagree; to me Special Issue #2
7 basically is saying, "Okay, you found a person guilty of
8 capital murder, you decided that he was a future danger
9 to society" but if you have decided, "No" on that then
10 you won't be looking at this issue.

11 A Right.

12 Q So you found him guilty of murder, capital
13 murder, you decided he was probably going to be a danger
14 to society in the future. Special Issue #2 basically is
15 saying after making those decisions you need to go back
16 and re-look at all the evidence you have heard again and
17 decide is there anything in there that is sufficiently
18 mitigating to you to make you believe that this person
19 should receive a life sentence rather than the death
20 penalty?

21 Now, if you find that there is not
22 enough -- that word is hard for me -- find that there is
23 not enough sufficient mitigating evidence then you answer
24 that question "No" that then a person would receive the
25 death penalty, if you find sufficient mitigating evidence

1 in there then you would answer that question "Yes" and
2 the person would receive a life sentence.

3 Now, "sufficient mitigating evidence",
4 what is that?

5 It could be any number of things, it
6 just depends on how you feel about things. You know, one
7 person might consider the fact that the person was
8 intoxicated at the time the crime was committed, they
9 might consider that a mitigating circumstance, they might
10 say, you know, "If he hadn't been drunk it wouldn't have
11 happened and I think that's enough for me to give him a
12 life sentence" while another person hearing the same
13 evidence might say, "Well, that's no excuse whatever to
14 me. That's not going to make me any difference."

15 So you can see one juror as opposed to
16 another juror might hear the same evidence and feel
17 differently about it?

18 A Yes.

19 Q So the question you are being asked is just
20 strictly basically your opinion, did you hear something,
21 it doesn't matter whether it's one thing or maybe a
22 combination of things that makes you feel like this
23 defendant should receive a life sentence rather than the
24 death penalty.

25 I can't tell you what the evidence will

1 be because I don't know but it could be certain things
2 like the age of the defendant, it could be family history
3 of the defendant, you know, he had a rough background or
4 he had a good background or it could be that the
5 defendant is a religious person, it could be the
6 defendant is not a religious person, you know, no telling
7 what kind of evidence you might hear.

8 And with mitigating evidence you are
9 going to hear all this evidence during the punishment
10 phase but it's up to you as a member of the jury, it's
11 up to you to decide whether that evidence is important
12 to you or whether you place much weight on it.

13 But my question to you is; would you
14 consider all the evidence you heard, whether it was
15 evidence of intoxication or age or family background or
16 whatever it might be, would you listen and consider that
17 evidence before making your decision and then make
18 whatever decision you feel is appropriate?

19 A I think you would have to hear everything
20 before you could make a correct decision.

21 Q So you would give consideration? You know, you
22 can consider all this evidence or any particular piece
23 of it and say, "Well, I think that's very important, I
24 am really going to, you know, I'm really going to use
25 that in my thought process a lot because I think that's

1 important" or you might say, "You know, that is just not
2 important to me."

3 But you would listen and consider all
4 the evidence before making your decision?

5 A Yes, sir. I would.

6 Q Okay. Mr. Preddy, on capital murder I want to
7 make sure we go through these steps and make sure that
8 you understand that it's a three step process basically,
9 first you wait and decide and hear the evidence and if
10 the person is guilty or not guilty you make that
11 decision.

12 A Okay.

13 Q Then you go to Special Issue #1 which is what
14 we call "future dangerousness", my question to you is if
15 you found a person guilty of capital murder and robbery
16 like we have got in that indictment or murder and rape,
17 whatever it might be, if you find a person guilty of
18 capital murder we need a fair and impartial jury, we need
19 a jury of people who can say, "Okay, I found this
20 defendant guilty of capital murder but I haven't decided
21 his punishment yet, I haven't decided the answer to
22 Special Issue #1 yet."

23 That's this question about future
24 dangerousness, could you wait and hear all the evidence
25 during the punishment phase before deciding your answer

1 on Special Issue #1?

2 A Yes, sir.

3 Q And not just automatically say, "Well, he's
4 guilty of capital murder, I am automatically going to
5 answer 'Yes' to Special Issue #1."

6 You wouldn't do that, would you?

7 A No. I don't think so.

8 Q Then after you -- you have answered Special
9 Issue #1 -- let's assume that you answer "Yes" to that,
10 found that he's going to be a danger in the future, you
11 go to Special Issue #2, you have already found the person
12 guilty of capital murder, you have already decided they
13 are going to be dangerous in the future but you still
14 haven't given them the death penalty, you still haven't
15 given them a life sentence until after you have answered
16 Special Issue #2.

17 What we need you to do again is consider
18 all the evidence for the guilt and innocence phase and
19 then through to the punishment phase, consider all that
20 evidence and then answer Special Issue #2 based on that
21 evidence.

22 Could you do that without automatically
23 saying, "Well, I found this guy guilty of capital murder
24 -- we have had jurors in the past who would say, "Hey,
25 I found this guy guilty of capital murder, I decided he

1 was going to be a danger in the future. I'm going to
2 automatically answer 'No' on that next Special Issue just
3 so I can give him the death penalty."

4 But in order to be fair and impartial
5 you need to consider all that before making your
6 decision.

7 Would you do that?

8 A Yes, sir. I would.

9 Q Okay. Let me shift gears with you for a
10 minute, first, let me stop and ask you if there's any
11 questions that you have right now?

12 A No, sir. Not right now.

13 Q Okay. Let me just talk to you about murder,
14 if you found -- if you heard all the evidence and
15 decided, well, you know, I believe the State has proved
16 to me that the person committed murder but I don't
17 believe they proved the robbery then if the jury decided
18 that then they would find that person guilty of murder
19 but not capital murder, do you see what I'm saying?

20 A Yes, sir.

21 Q Because we have not proved that robbery element
22 of the crime.

23 Okay. Then you get to what would be the
24 full range of punishment.

25 The full range of punishment in a

1 murder, not capital murder because we have talked about
2 in capital murder it's life or death but in just a murder
3 the full range of punishment is five years probation up
4 through 99 years or life in the penitentiary.

5 A Okay.

6 Q Okay. Now, I think the Judge talked to you all
7 a little bit about this during the jury selection process
8 or during the voir dire a couple of weeks ago.

9 A Yes, sir.

10 Q You know a murder can be anything from a
11 vicious act on the one hand that you might feel that you
12 want to give someone a long lengthy sentence or on the
13 other hand it might be something like a mercy killing
14 situation, a situation where an old old couple has lived
15 together for years and one of them is dying of cancer and
16 is in a lot of pain and asks the other one to end that
17 pain for them and that person does it.

18 But that's murder because you have
19 intentionally killed a person.

20 Most people don't see that as being the
21 same kind of thing as what you think of, a vicious
22 murder, so that's the reason the State Legislature gives
23 a broad range of punishment so that you could consider
24 anything from five years probation to 99 years to life,
25 depending on how mean and vicious of a crime it was I

1 suppose so in assessing a murder case could you give --
2 could you give consideration, and I don't mean just the
3 blinking of an eye, but could you consider the full range
4 of punishment before deciding what the proper punishment
5 could be?

6 And you know, we are not asking you to
7 say, "Well, I would give 99 years" or "I would give five
8 years probation", but would you just consider the full
9 range of punishment before making your decision?

10 A Yes, sir.

11 Q Okay. In proving our case the State is
12 required to prove our case beyond a reasonable doubt and
13 we are prepared to do that, if we weren't, you know,
14 there wouldn't be any sense in us being here.

15 We are not required to prove our case
16 beyond all doubt and there's a definition of beyond a
17 reasonable doubt that the Court will probably read to you
18 at some point but for my purposes right now the fact that
19 we have to prove our case beyond a reasonable doubt,
20 would you hold us to that burden? Is that something that
21 you are accustomed to do and that's okay with you?

22 A Yes, sir.

23 Q Okay. Along with that holding us to our proof
24 beyond a reasonable doubt goes the burden of proof. The
25 burden of proof in this case rests with the State and I

1 think you are familiar with that, we have got to prove
2 the defendant did it.

3 A Right.

4 Q The defendant doesn't have to prove that he
5 didn't do it.

6 Do you think that's fair?

7 A Yes, sir.

8 Q And that's kind of the way our system has
9 always worked and that's acceptable to you?

10 A Yes, sir.

11 Q Okay. Now, in proving our case, you know, when
12 I say they don't have a burden of proof, I mean they can
13 sit over there and go to sleep, they are not going to but
14 they could literally.

15 MR. OLD: Your Honor, I object
16 to him speculating on his question about what other
17 people are going to do or not.

18 THE COURT: Sustained.

19 MR. TOWNSEND: They are not
20 required to do anything.

21 You know we are required to prove it and
22 that's all you have -- that's all you can pay attention
23 to to be a fair and impartial juror, you can't sit over
24 there and say, "Well, they didn't do much" or "They
25 didn't do as much as I thought they would."

1 Would you be able to hold us to our
2 burden and make us prove out case beyond a reasonable
3 doubt irregardless of what the Defense may do or may not
4 do?

5 THE POTENTIAL JUROR: Yes,
6 sir. I would.

7 Q (BY MR. TOWNSEND) And with that goes the Fifth
8 Amendment privilege that you are probably familiar with,
9 the Fifth Amendment privilege talks about that the
10 defendant has a right to not testify in a trial if he
11 chooses, of course he certainly has the right to testify
12 if he chooses to do that also but when we say that it's
13 our human nature to say or think a little bit, well, you
14 know, I sure would like to hear what he's got to say or
15 if that were me I would want to get up there and testify,
16 that's human nature to say that and think that and we do
17 expect you, you know, to be fair and impartial, you don't
18 have to be able to put that completely out of your mind
19 but just not consider it when you are making your
20 decision, the fact that the defendant didn't testify if
21 in fact that's the way it was.

22 Would you be able to do that, put that
23 aside?

24 A Yes, sir.

25 Q And that goes back to just basing your decision

1 strictly on the evidence. The evidence is what you hear
2 from the witness stand, anything you don't hear is not
3 evidence.

4 A Right.

5 Q So if the defendant didn't testify that's not
6 evidence of anything?

7 A That's right.

8 Q Okay. Would you be able to put that aside?

9 A Yes, sir.

10 THE COURT: Twenty-five
11 minutes.

12 MR. TOWNSEND: Thank you, Your
13 Honor.

14 In a criminal trial you have all sorts
15 of witnesses, you might have witnesses that are police
16 officers, you might have witnesses that might be someone
17 you know, might have witnesses of all -- psychiatrists,
18 psychologists, lab technicians, you know, you can go on
19 and on about the type witnesses you might have.

20 We need a fair and impartial juror, we
21 need fair people who can sit there and base all of their
22 decision on their witnesses and give them all -- all, you
23 know, if you are having a track meet you make everybody
24 start out in the same spot, that's what we need our
25 witnesses to do.

1 Would you be able to do that, give every
2 witness a fair chance?

3 THE POTENTIAL JUROR: Yes,
4 sir.

5 Q (BY MR. TOWNSEND) Okay. Would you be able,
6 you know, we need you to judge the credibility of those
7 witnesses based on their testimony and based on what you
8 hear from the witness stand and not just automatically
9 believe or disbelieve or not even give a little bit of
10 a head start to anyone just because they were a minister
11 or a police officer or something of that nature.

12 Could you do that?

13 A Yes, sir.

14 Q Start them all out on the same spot?

15 A Right.

16 Q I note you had in your questionnaire that you
17 have a relative who works in the police department?

18 A Used to. Yes, sir.

19 Q "Used to work in the police department?"

20 A Yes, sir. He's passed away now.

21 Q Okay. In a situation like that, let's just
22 talk about police officers for a minute; would you be
23 able to start a police officer off just like you would
24 anybody else, not automatically giving them a little bit
25 of a head start so far as your believing them just

1 because they are police officers?

2 A No, sir.

3 Q Okay. In this case, Mr. Preddy, the indictment
4 talks about a murder and robbery and all, talks about all
5 -- mentions all the elements of the crime, you know, that
6 it happened in Morris County, Texas and so on.

7 The State is required to prove our case
8 beyond a reasonable doubt that as to each and every
9 element.

10 Would you hold us to that burden?

11 A Yes, sir.

12 Q Okay. Let's just talk about a scenario where
13 you have got, let's say you have got a statement
14 purported to be from the defendant, a statement in
15 writing that basically admits guilt.

16 In order to consider that sort of thing
17 you have got to consider one; do you believe the
18 statement is true, but you have also got to consider the
19 voluntariness of that statement, you know.

20 And when I say "Consider the
21 voluntariness of it", that's different than considering
22 did he tell the truth in the statement, you have also got
23 to consider was that statement taken voluntarily or was
24 he coerced or directed into making a statement or, you
25 know, that sort of thing?

1 A Yes, sir.

2 Q And I think the Judge's instructions in a
3 criminal case where there's a statement that comes in
4 like that, if they do, is that unless you consider the
5 statement to be truthful then you should give it no
6 weight, unless you consider and also unless you consider
7 the statement to be voluntary you should give it no
8 weight. The State of Texas is required to prove any
9 statement like that just like we are anything else in the
10 trial, we are required to prove to you beyond a
11 reasonable doubt that that statement was voluntary if in
12 fact such a statement came into a trial.

13 Would you be able to sit on the jury and
14 basically not give any weight to a statement unless you
15 believe, one; that it's truthful and, two; that it was
16 voluntary?

17 A Yes, sir.

18 Q And you would hold us to that burden of proving
19 that voluntariness to you beyond a reasonable doubt?

20 A Yes. I would.

21 Q Mr. Preddy, in looking at your answer on the
22 death penalty there you wrote you are in favor of the
23 death penalty -- I know this has been a couple of weeks
24 since you answered this, if you don't remember any of
25 this I can bring it to you and show it to you.

1 THE COURT: I have got the
2 original here if he needs to refer to it. If you need
3 your questionnaire let me know.

4 MR. TOWNSEND: Right up there
5 on the first page, "Are you in favor of the death
6 penalty?"

7 And your answer was "I feel the death
8 penalty will help prevent serious crime."

9 And "With reference to the death penalty
10 which of the following statements would best represent
11 your feeling?"

12 And you circled both "Number 1" and
13 "Number 2."

14 I don't know if you recall what they
15 say.

16 THE POTENTIAL JUROR: I do
17 not. No.

18 THE COURT: Let the record
19 reflect that the Court has handed the original to the
20 juror, the original questionnaire.

21
22 (Handed to the potential juror.)

23
24 THE POTENTIAL JUROR: Okay.

25 MR. TOWNSEND: I know, Mr.

1 Preddy, that you filled this questionnaire out before we
2 talked to you today and I have given you some information
3 about the difference between murder and capital murder
4 in Texas and that may have been information that you were
5 not familiar with or were familiar with, I don't know.

6 But after our discussion today you
7 understand that in a capital murder case we need those
8 jurors who can be fair and impartial as to the death
9 penalty and, you know, not automatically say, "Well, he's
10 been found guilty of capital murder, I am automatically
11 giving him the death penalty."

12 Could you do that? Could you be fair
13 and impartial and not just automatically vote for the
14 death penalty?

15 THE POTENTIAL JUROR: After
16 you explained it to me a little more I understand more
17 than I did.

18 Q (BY MR. TOWNSEND) Then down here at the very
19 bottom of the page it says, "If you are in favor of the
20 death penalty in some murder cases, do you agree that a
21 life sentence rather than the death penalty would be
22 appropriate under the proper circumstances?"

23 And your answer was "No."

24 Now that the law in Texas so far as
25 murder and capital murder has been explained to you do

1 you feel like you could base your decision on a capital
2 murder case, do you feel like that you could, if the
3 facts were appropriate and you are the one that would
4 decide whether they are appropriate or not, do you feel
5 like you could give the death penalty if the facts were
6 appropriate?

7 A Yes, sir. I do.

8 Q Do you feel like if the facts were appropriate,
9 and I'm talking about Special Issue #1 and #2, do you
10 feel like you could give a life sentence if the facts
11 were appropriate?

12 A Yes, sir. If everything was proved. Yes, sir.

13 Q So Special Issue #1, do you remember -- I
14 remind you that is just like guilt or innocence, the
15 State has got to prove that to you beyond a reasonable
16 doubt?

17 A Right.

18 Q Basically we have to prove that the person
19 would be a future danger before you could vote "Yes" on
20 that.

21 A Yes, sir.

22 Q So Special Issue #2, that's a little different,
23 that's not a situation where the State has the burden of
24 proof to prove that to you beyond a reasonable doubt,
25 it's just kind of left up to you, it's kind of what is

1 your opinion type thing.

2 A Okay.

3 Q Now, do you understand now that we have -- now
4 that we have talked a little bit about murder and capital
5 murder in Texas do you feel that you could go through and
6 be fair and impartial through the entire trial, both the
7 guilt or innocence part and the punishment part and first
8 make your decision on guilt and innocence and then hear
9 all the punishment evidence before deciding your answer
10 to Special Issue #1?

11 A Yes.

12 Q Okay. And just the fact that you found a
13 person guilty of capital murder you wouldn't be leaning
14 toward giving the death penalty until you had answered
15 Special Issue #1?

16 A Right.

17 Q And you, when you got to Special Issue #2 you
18 found him guilty of capital murder, you decide he was a
19 future danger to society, when you get to Special Issue
20 #2 would you be able to go back and sort of re-think all
21 the evidence that you have heard and base your answer to
22 Special Issue #2 on what you thought was appropriate and
23 not just automatically, you know, say, "Well, I am going
24 to say 'No' to give him the death penalty" or not
25 automatically say "I'm going to say 'Yes' to be sure he

1 doesn't get the death penalty?"

2 A Yes, sir.

3 Q Could you do that?

4 A Yes, sir. I could.

5 MR. TOWNSEND: Pass the
6 witness, Your Honor.

7

8 VOIR DIRE EXAMINATION

9 BY MR. OLD

10

11 Q Mr. Preddy, going to your questionnaire you
12 state on the first page you are in favor of the death
13 penalty?

14 A Yes, sir.

15 Q That you think it is a deterrent to serious
16 crimes?

17 A Yes, sir. I do.

18 Q On the next part of the question concerning the
19 death penalty you circled two answers, you first said,
20 "I believe that the death penalty is appropriate in all
21 murder cases" and you are speaking of any time that one
22 takes another's life without justification?

23 A That's before it was explained different than
24 what it could be, if it was a matter of self defense or
25 defending somebody.

1 Q You realize if you kill somebody in self
2 defense it's not murder, it's justified?

3 I'm talking about where you have a plain
4 murder, what they referred to as "plain murder", one that
5 is not capital.

6 A Yes, sir.

7 Q Do you believe the death penalty is appropriate
8 in this case?

9 A Not necessarily. Not now. No.

10 Q "Not now" but you did prior -- what changed
11 your thinking from the time you answered this?

12 A When I sit here and it being explained to me
13 the difference in it.

14 Q The difference in murder and capital murder?

15 A Yes, sir.

16 Q You also checked I believe that "The death
17 penalty is appropriate in some murder cases and I can
18 return a verdict in a proper case which assessed the
19 death penalty?"

20 A Yes, sir.

21 Q Now, I am not -- that question was not asked
22 into what you think the law is, it asks your opinion
23 and you believe if I am reading your answer to the
24 first one correctly that in any murder case intentionally
25 or knowingly taking another's life without

1 justification --

2 MR. TOWNSEND: Object, Your
3 Honor. I believe he already answered that question that
4 he understands the law better now.

5 THE COURT: Overruled.

6 MR. OLD: And you are saying
7 that, I mean I'm not saying that you are saying the law
8 is -- you are saying that in your opinion that death
9 ought to be -- is an appropriate punishment for anyone
10 who intentionally or knowingly takes the life of another
11 without justification?

12 THE POTENTIAL JUROR: Without
13 justification.

14 Q (BY MR. OLD) And "justification" you spoke of
15 being "self defense?"

16 A Yes, sir.

17 Q Now, do you understand that capital murder is
18 the commission of the crime of murder with the additional
19 circumstance of having done so in the course of a robbery
20 or kidnapping or rape, killing a peace officer in the
21 line of duty, killing a child I believe under the age of
22 six?

23 A Yes.

24 Q Those are the only incidents that capital
25 murder is a legal punishment?

1 A That's my understanding. Yes.

2 Q You then came down and answered "If you are in
3 favor of the death penalty in some murder cases do you
4 agree that a life sentence rather than a death penalty
5 would be appropriate under the proper circumstances?"

6 And you answered "No?"

7 A Yes.

8 Q Is that still your belief or your opinion?

9 A I think that's my opinion.

10 Q Okay. Do you think that the correct punishment
11 for murder is death?

12 A That's correct.

13 Well, --

14 Q I'm not trying -- I'm just trying to figure out
15 what your thinking is and what your opinion is.

16 A Like I said, it would have to be justifiable.

17 Q Are you not -- for you not to give the death
18 penalty it would have to be legally justified to you?

19 A Yes, sir.

20 Q And that would be self defense?

21 A Yes, sir.

22 Q What else would justify it to you?

23 A An accident.

24 Q That's where perhaps a hunting accident
25 were --

1 A Yes. Yeah.

2 Q What else?

3 A A car accident, something like that where
4 someone was killed.

5 Q But whether in the commission of -- in the
6 commission of another crime such as robbery you think
7 that the death penalty is appropriate if you
8 intentionally or knowingly kill someone?

9 A Yes, sir.

10 Q So I mean what you are telling me is when a
11 life is taken without legal justification that it ought
12 to be an eye for an eye or a tooth for a tooth or a life
13 for a life?

14 A Yes, sir.

15 Q That's your belief?

16 A Yes, sir.

17 Q I'm not criticizing your belief.

18 A Thank you.

19 Q You have been told in this case that the range
20 of punishment can range from five years probated to
21 death?

22 A Yes, sir.

23 MR. TOWNSEND: Object, Your
24 Honor. I believe he stated "five years probated to
25 death" and that's not the range of punishment.

1 THE COURT: Mr. Old, I think
2 I know where you are going but I think since we are
3 talking about the death penalty you need to clarify it
4 would be --

5 THE POTENTIAL JUROR: Five
6 years probation to life imprisonment?

7 MR. OLD: Yes. Depending on
8 what you find a man guilty of, whether you find him
9 guilty of voluntary manslaughter or murder or capital
10 murder?

11 THE POTENTIAL JUROR: Yes,
12 sir.

13 Q (BY MR. OLD) Capital murder, the punishment
14 is life or death.

15 A All right.

16 Q And voluntary manslaughter, five years probated
17 to murder, life?

18 A Yes, sir.

19 Q Okay. But you are telling me that your opinion
20 is that if he intentionally kills somebody he ought to
21 get the death penalty?

22 A Unless it's justifiable cause of death, you
23 know.

24 Q We -- we have defined justification so you
25 could not give someone a five year probated sentence for

1 intelligently taking the life?

2 MR. TOWNSEND: Object, Your
3 Honor. He's asking him to tell him what he would do in
4 that situation. He's only required to consider --

5 THE COURT: Sustained.
6 Rephrase it.

7 MR. OLD: You could not
8 consider a set of circumstances where a life was
9 intentionally taken without legal justification to where
10 you could sentence somebody to five years probation?

11 THE POTENTIAL JUROR: It would
12 depend on the circumstances. I would just have to sit
13 there and listen to it and see what all the deciding
14 factors are.

15 Q (BY MR. OLD) Okay. Now, you have told me that
16 a person is justified if he kills in self defense?

17 A Yes, sir.

18 Q And it is justified if it is an accident?

19 A Say that again, now.

20 Q Justified if it is an accidental death such as
21 a hunting accident?

22 A I'm not understanding, apparently.

23 Q Okay. Murder?

24 A "Murder."

25 Q Murder is the intentional -- intentionally and

1 knowingly killing another without justification, legal
2 justification is that you act in self defense and under
3 the law of self defense.

4 A Okay.

5 Q If it was an accident such as I think you
6 mentioned an automobile accident?

7 A Okay.

8 Q What else would -- and you told me anytime
9 someone intentionally and knowingly killed someone that
10 you think it ought to be a life for a life, what else
11 would justify to you --

12 MR. TOWNSEND: Object, Your
13 Honor. I don't believe that he's required to tell what
14 he considers justification.

15 THE COURT: Sustained.

16 MR. OLD: If you found someone
17 guilty of the crime of voluntary manslaughter or of
18 murder based on your answer you have said that a -- you
19 have been asked if a life sentence rather than the death
20 penalty would be appropriate under the proper
21 circumstances and your answer on your questionnaire, you
22 said, "No. It would not", is that correct?

23 THE POTENTIAL JUROR: That's
24 what I put down. Yes.

25 Q (BY MR. OLD) Is it a fair statement that based

1 upon your opinions that you have a bias toward the upper
2 end of punishment or the giving of a death penalty?

3 A I wouldn't say it was "bias", no.

4 Q What would you say it is?

5 A I just think that the punishment ought to suit
6 the crime that has been committed.

7 Q And in response to questions -- upon questions
8 you answered I believe that the death penalty is
9 appropriate in all murder cases, is that still your
10 answer?

11 A No.

12 Q You have changed your mind?

13 A Yes, sir.

14 Q You said it was after Mr. Townsend explained
15 to you something?

16 A The difference between murder and capital
17 murder.

18 Q How -- I mean the question that you responded
19 to by circling "Number 1" one was not asking you what the
20 law was, it asked you what you thought and you said you
21 believe the death penalty is appropriate in all murder
22 cases and it didn't say in just capital murder cases.

23 Now, simply by him telling you that it
24 was not, that simple murder was not punishable by death
25 did that change your opinion?

1 A To some degree. Yes.

2 Q To a degree?

3 A Yes.

4 Q But not totally?

5 A I wouldn't say "totally", no.

6 Q It is your preference or opinion or belief that

7 simple murder ought to be punished by up to death?

8 A It could. Yes.

9 Q I mean you are in favor of the death penalty

10 being an appropriate punishment in any murder case?

11 A Not "any", no.

12 Q In any charge of murder, I'm not talking about

13 the circumstances?

14 A Okay.

15 Q You think the range of punishment for the crime

16 of simple murder ought to be from -- well, let's say five

17 years probated to death?

18 A Yes, sir.

19 Q In place of "five years to life?"

20 A Yes, sir.

21 Q Let me ask you something, can you conceive of

22 a set of circumstances under which a life may be taken

23 or murder committed that you could give as little as a

24 five year probated sentence?

25 A Yes, sir.

1 Q Let's presume that -- and I'm not in this
2 particular case -- do you know anything about the facts
3 of this case by hearsay, newspaper or otherwise?

4 A No. All I ever read about it was in the
5 newspaper.

6 Q You have read the newspaper about it?

7 A Yes, sir.

8 Q Do you recall what you read? I'm not asking
9 you what you read.

10 A That's too long ago.

11 Q What I mean, back when you read those things
12 did you form an opinion as to anyone's guilt for having
13 caused that?

14 A No. Because I don't know what all happened.

15 Q You knew Mr. Cole?

16 A Yes, sir.

17 Q You had been to his house?

18 A Yes, sir.

19 Q Do you recall whether or not the report that
20 you read indicated this happened at his house?

21 A I don't remember.

22 Q Will you assume with me that it did.

23 A Okay.

24 Q Okay. You have been to that location?

25 A Yes, sir.

1 Q I believe you said a couple of times?

2 Did you mean specifically "two times"
3 or "two or more times?"

4 A I know it's less than a dozen times that I have
5 been there.

6 Q You have been there more than twice then?

7 A Yes, sir.

8 Q Perhaps 10 or 12 times?

9 Did you go in his house?

10 A No, sir.

11 Q Did you go to the door?

12 A Yes, sir.

13 Q Do you recall whether you went in the front
14 door or carport door or both?

15 A Usually just walked to the carport and knocked
16 on the door.

17 Q Do you generally recall what his house looked
18 like, where it is?

19 A "Where it is?"

20 Q Do you recall the carport, the door?

21 A Pretty much. Yeah.

22 Q If that particular area that you were in there
23 at the carport door was an issue in this case do you
24 think you could -- excuse me -- was at issue, I mean if
25 that was introduced into evidence do you think that you

1 could lay aside your knowledge of that area and make your
2 decision based upon the evidence here?

3 A I think you would have to.

4 Q I think you would have to, too, but can you?
5 I mean you have been there and you know that the door is
6 red -- I'm not saying it's red but just for example, but
7 basically say all the testimony was that it was green and
8 that really was an issue in this case, could you lay
9 aside what you knew of your own knowledge and base your
10 decision on the evidence?

11 A I think so. Yes, sir.

12 Q You mean I could disprove to you something that
13 you knew as a fact, you are just not saying, "Oh, it was
14 red, I'm not sure, I know it was red" and the evidence
15 was that it was green, you could lay that aside?

16 A Probably not. No.

17 Q Let's say that the issue as to the scene was
18 whether or not the door had a glass in it or window and
19 you knew of your own knowledge it did and there was just
20 no evidence offered as to whether it did or not, could
21 you lay aside the knowledge that you had and make your
22 decision on the evidence? I mean you know it has a glass
23 and that is something that is in issue in your mind, I
24 mean it proves something to you but it wasn't proven, no
25 one asked it in the trial of this case, the evidence

1 wasn't offered, you could totally lay aside something you
2 knew because it wasn't offered in evidence?

3 A Yeah. I think so.

4 Q You think you could?

5 A Yeah.

6 Q You could?

7 A Something as simple as that.

8 Q Let's say that was crucial on the issue as to
9 whether you would find him guilty or not guilty and you
10 knew there was a glass, a window in the door, there's no
11 evidence to change it, you were going to have to render
12 your verdict from the evidence, you get here in the
13 courtroom?

14 A Yes, sir.

15 Q You could lay that aside?

16 A I think so. Yes.

17 Q But you couldn't lay aside knowing what color
18 the door was when they proved to you or testimony was it
19 was another color?

20 A I don't think -- I don't know, Bird, I really
21 don't know.

22 Q I mean I'm not trying to play games with you.
23 If in fact you know where you went was
24 the scene of the crime you have some knowledge of it and
25 the more testimony you hear the more you may recall about

1 that particular area.

2 If it came down to the evidence being
3 at variance as to what you accepted in your mind to be
4 true because you have been there could you lay that
5 aside?

6 That is probably the dumbest question
7 I have ever asked but I think I know the answer.

8 A I couldn't.

9 Q You could not?

10 A No.

11 Q I'm not trying to play games with you, I mean
12 I don't -- you may know something that may be in dispute
13 in evidence.

14 THE COURT: Excuse me a
15 moment, Mr. Old.

16 Mr. Preddy, when was the last time you
17 went to Mr. Cole's house? When was the last time you saw
18 it?

19 THE POTENTIAL JUROR: It would
20 have been over two years ago.

21 THE COURT: Thank you, sir.

22 THE POTENTIAL JUROR: I want
23 to say closer to three years because it -- I spent a year
24 and a half in Saudi Arabia.

25 THE COURT: It would have been

1 before you went to Saudi Arabia?

2 THE POTENTIAL JUROR: Yes,
3 sir.

4 THE COURT: When did you
5 leave?

6 THE POTENTIAL JUROR: In
7 December of '92.

8 THE COURT: So it would have
9 been prior to December of '92?

10 THE POTENTIAL JUROR: Yes,
11 sir.

12 THE COURT: How far back, can
13 you tell me?

14 You said you usually went in that area
15 on a deer lease?

16 THE POTENTIAL JUROR: I
17 crossed his property to get onto the deer lease.

18 THE COURT: Did you see him
19 that season before you went to Saudi Arabia?

20 THE POTENTIAL JUROR: Yes,
21 sir.

22 THE COURT: At his house?

23 THE POTENTIAL JUROR: No, sir.
24 Saw him on the property. I did not go to his house.

25 THE COURT: You didn't go

1 there?

2 THE POTENTIAL JUROR: No.

3 THE COURT: You may continue,

4 Mr. Old.

5 MR. OLD: You went to Saudi
6 Arabia in December of '92, is that right?

7 Do you know if in the fall or December
8 of 1992, which would be October through --

9 THE POTENTIAL JUROR: October-
10 November.

11 MR. OLD: Do you know whether
12 or not you went to his house during that period?

13 THE POTENTIAL JUROR: No, sir.
14 I am almost positive that I didn't.

15 Q (BY MR. OLD) But you are not sure?

16 A No.

17 Q How many times -- did you see him in '92?

18 A Maybe, Bird. I'm not sure.

19 Q A couple of times, more than once?

20 A Before hunting season or during hunting season?

21 Q Anytime in that year?

22 A Maybe seven or eight times.

23 I would see him -- we would see him up
24 there at the store at Cason several times early on
25 Saturday morning.

1 Q I presume that you go to the deer lease out of
2 deer season, I don't know what you all do but I know you
3 build your stand and maybe plant some wheat or grain or
4 something?

5 A Yes, sir.

6 Q Work on your camp?

7 A Yes, sir.

8 Q So I mean when you would be going, not just in
9 deer season but pretty well all year around?

10 A Pretty much. Yes.

11 THE COURT: Twenty-five
12 minutes.

13 MR. OLD: Your Honor, may we
14 approach the bench?

15 THE COURT: You may.

16 Sir, could I get you to step out in the
17 hallway for just a minute, right over -- the door you
18 came in.

19
20 (The following occurred outside the
21 presence and hearing of the potential juror:)

22
23 THE COURT: Let the record
24 reflect that the juror is not present.

25 Yes, Mr. Old.

1 MR. OLD: Your Honor, the area
2 that he identified as being so far -- the area of Mr.
3 Cole's home is the exact area that as I understand it's
4 the area that the State alleges the crime was committed
5 in the location, it was right there at the door.

6 The fact that he has personal knowledge
7 of that scene and the fact that he cannot totally set
8 aside what he knows of his own personal knowledge if in
9 conflict with testimony would disqualify him as a juror
10 in this case.

11 THE COURT: I don't know how
12 difficult it will be to find a jury that is not familiar
13 with the area but if the State is willing to agree to
14 excuse the juror will certainly entertain any agreement.

15 MR. TOWNSEND: I agree on this
16 one, Your Honor.

17 THE COURT: Do you agree, Mr.
18 Old?

19 MR. OLD: Your Honor, it was
20 apparent that he knew where the house was, he would be
21 standing at the door.

22 THE COURT: Do you agree to
23 excuse him?

24 MR. OLD: Yes, sir.

25 THE COURT: Mr. Wardlow, do

1 you agree to excuse him?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Sheriff, tell him
4 he has been excused, thank him.

5 And let's stay on the record for just
6 a moment.

7 Mr. Old, whenever we excuse a juror I
8 normally will ask you and your client if you both agree,
9 if you will tell me in the presence of your client I
10 don't need to ask your client, I will dispense with
11 asking him and just look to you for any agreement.

12 MR. OLD: Yes, Your Honor.

13 THE COURT: Let's take a short
14 recess and we will talk to number three.

15 MR. TOWNSEND: Your Honor?

16 THE COURT: On the record?

17 MR. TOWNSEND: No. It doesn't
18 have to be on the record.

19 THE COURT: Off the record.

20 Take a break.

21
22 (Recess.)

23
24 (The following occurred in the presence
25 and hearing of the potential juror:)

1 NOLA JEAN LITTLES, Potential Juror #462,
2 was called as a Potential Juror and, having been
3 previously sworn by the Court, testified as follows:
4

5 VOIR DIRE EXAMINATION

6 BY MR. TOWNSEND

7
8 THE COURT: "L I T T L E S ?"

9 THE POTENTIAL JUROR: Yes,
10 sir. That's right.

11 THE COURT: How are you doing,
12 Ms. Littles?

13 I'm Gary Stephens, we kept you back
14 there for awhile and we are not going to be able to talk
15 to you today but I want to be able to ask you a couple
16 of questions before I reschedule you; first I want to
17 introduce you to two lawyers representing the State of
18 Texas, that's Mr. Richard Townsend, Mr. Randall Lee.

19 We have two Defense Attorneys, only one
20 is present today and that is Mr. Bird Old, III.

21 Seated next to Mr. Old is the Defendant,
22 Mr. Wardlow.

23 Now, ma'am, you filled out a
24 questionnaire and you are here today to talk to us about
25 jury service on a capital murder case.

1 On the second page of the questionnaire
2 you answered a question and it states that you have a
3 moral, religious or personal belief that would prevent
4 you from sitting in judgment on another human.

5 You also answered a question that
6 indicated that you have a moral, religious or personal
7 belief that would prevent you from returning a verdict
8 that would result in the execution of another person?

9 Do you recall answering those questions?

10 THE POTENTIAL JUROR: Yes,
11 sir. I do.

12 THE COURT: Have you ever been
13 called for jury service before in a criminal case?

14 THE POTENTIAL JUROR: No.

15 THE COURT: So this is your
16 first experience?

17 THE POTENTIAL JUROR: Yes.

18 THE COURT: Ma'am, in most
19 criminal cases a juror is not called upon to ever assess
20 a death penalty, most criminal cases you are called upon
21 to determine whether a person is or is not guilty and if
22 you find that person is guilty then you are called upon
23 to set punishment.

24 If this were a non-death case, if this
25 were a case involving a theft or a burglary would you

1 have any personal or religious view that would prohibit
2 you from sitting as a juror in judgment of a person?

3 THE POTENTIAL JUROR: No.

4 THE COURT: So it's the death
5 penalty that gives you a problem?

6 THE POTENTIAL JUROR: Yes.

7 THE COURT: Ma'am, if you were
8 to sit on a case and be called upon to answer certain
9 questions and the questions -- let me back up; in a death
10 penalty case a person does not vote life or death, they
11 answer certain questions, based upon the results of those
12 answers the sentence is either life or death.

13 A juror is entitled to know the effect
14 of his or her answer so that you would know by answering
15 questions certain ways that the Judge would have no
16 choice but to order a person executed.

17 If you were to be on a capital murder
18 case the first part of the trial would be for you to
19 determine whether or not the person is guilty.

20 From what you have told me you could do
21 that?

22 THE POTENTIAL JUROR: Yes.

23 THE COURT: Now, was that a
24 "Yes?"

25 Everything is being recorded so I need

1 a verbal answer.

2 THE POTENTIAL JUROR: I'm
3 sorry.

4 THE COURT: So, now, we are
5 going to assume that you have been selected as a jury
6 member, you have decided a person is guilty of capital
7 murder and now you are called upon to determine
8 punishment; if you believed that the evidence just
9 without any doubt at all, any, led you to believe the
10 answer should be "Yes" and "No", forget what the
11 questions are, just assume that the evidence proves to
12 you the answer to the two questions, the first one is
13 "Yes", the second one is "No", that's what the evidence
14 tells you but you also know if you answer "Yes" and "No"
15 the Judge will order that person executed, would you be
16 able to answer "Yes" and "No" knowing that it would
17 result in execution?

18 THE POTENTIAL JUROR: Well,
19 I would answer truthfully what I felt. Yes.

20 THE COURT: All right, ma'am.
21 I'm going to have you come back, I just
22 wanted to talk to you about those two areas, don't sit
23 there and think, oh, my gosh, I should have answered some
24 other way because I would have asked you a lot of other
25 questions just to get in mind where you are coming from,

1 what you are telling us it would weigh heavily on your
2 mind, you don't want to but if you are sworn in as a
3 juror you are going to follow your oath and do what the
4 law says?

5 THE POTENTIAL JUROR: That's
6 right.

7 THE COURT: We need to talk
8 to you further, you are not the next in line, I don't
9 want to keep you here until 6:00 or 7:00.

10 I need you to come back tomorrow morning
11 at 9:00 o'clock, tomorrow morning at 9:30, and we will
12 start with you.

13 Can you be here?

14 THE POTENTIAL JUROR: Yes,
15 sir.

16 THE COURT: Then is that
17 agreeable with both Counsel?

18 MR. TOWNSEND: Yes, sir.

19 MR. OLD: Yes.

20 THE COURT: Okay, Sheriff.

21 Bring out our next juror.

22 Ma'am, you have a good afternoon.

23 THE POTENTIAL JUROR: Thank
24 you.

25 THE BAILIFF: Watch your step

1 here, please and have a seat right up there next to the
2 Judge.

3
4 JESSIE ROY COX, Potential Juror #292,
5 was called as a Potential Juror and, having been
6 previously sworn by the Court, testified as follows:

7
8 THE COURT: Good afternoon,
9 sir. How are you doing?

10 THE POTENTIAL JUROR:
11 Tolerable.

12 THE COURT: Go ahead and take
13 a seat there and let me find your questionnaire, sir.

14 You are "Jessie Cox", is that correct?

15 THE POTENTIAL JUROR: That's
16 correct.

17 THE COURT: This is juror
18 number four.

19 Mr. Cox, I am Gary Stephens, I have been
20 assigned to pick a jury and hear testimony in this case
21 and you have been summoned as a prospective juror.

22 We have two lawyers representing the
23 State of Texas, Mr. Richard Townsend, Mr. Randy Lee.

24 We have two lawyers representing the
25 Defendant but only one is present in the courtroom and

1 that's Bird Old, III.

2 His partner for this case is Mr. Lance
3 Hinson who is not present today but will be during the
4 trial.

5 Seated next to Mr. Old is the Defendant,
6 Mr. Billy Wardlow.

7 Now, Mr. Cox, you have filled out a
8 questionnaire and the lawyers are familiar with your
9 answers, they are going to talk to you some about some
10 of the answers and they are also going to talk about the
11 principles of law involved in a death penalty case.

12 You will be asked a lot of questions,
13 the answers will let us know whether or not to put you
14 on the jury.

15 In order to be a juror you must able to
16 understand and follow the law. You don't necessarily
17 have to agree with the law, you could disagree with the
18 law completely but if you can follow the law you are
19 qualified but if you disagree to such an extent that you
20 can't follow the law you are not qualified.

21 We have also found on death penalty
22 cases even though a person is qualified it doesn't
23 necessarily mean that the person is an appropriate juror
24 so we need to know something about you and how you think.
25 Not only what you think but how you get to those

1 thoughts, it's going to seem like maybe you are on trial
2 and/or your opinions are on trial and I guess you could
3 say they are in a way but we don't really have any --
4 excuse me -- we don't have any right or wrong answers we
5 are looking for. It's not a pop quiz, it's not a test.
6 We want to know where you are coming from and how you
7 think so we can decide whether to put you on the jury.

8 What you can do to help us, sir, is just
9 be as open and honest as you can and we will make this
10 as short as possible.

11 If there's anything you don't understand
12 you stop us and get us to clarify, if you have a question
13 about the proceedings stop us, ask us what's on your mind
14 because if you are chosen as a juror we can't talk to you
15 about this case after today.

16 I also want you to know when the lawyers
17 are talking we are not talking to you about this
18 particular case unless the lawyer tells you that they are
19 doing so.

20 Usually if an example is given it has
21 to do with some example that the lawyers have made up
22 just to illustrate a point. The law does not permit us
23 to talk about this case so we are talking about law in
24 general and sometimes we'll apply that to certain facts
25 just to see what your opinions are.

1 Do you have any questions, sir?

2 THE POTENTIAL JUROR: No, sir.

3 THE COURT: All right. Mr.

4 Townsend, you may proceed.

5
6 VOIR DIRE EXAMINATION

7 BY MR. TOWNSEND

8
9 Q Mr. Cox, I'm Richard Townsend, I'm representing
10 the State in this case and I'm the District Attorney in
11 Morris County.

12 Mr. Lee is from Cass county and helping
13 me in this case.

14 I have had a chance to read your
15 questionnaire and I have got a few questions about your
16 questionnaire and I will talk to you also about the law
17 in general.

18 You mentioned in your questionnaire that
19 you have been involved in a court martial, was that as
20 a juror or was it as a witness?

21 A A witness.

22 Q Were you a witness for the --

23 A For the State.

24 Q -- for the State basically?

25 Okay. You mentioned in here that you

1 know Bird Old, the Defense Attorney and you said you know
2 him by reputation.

3 Do you personally know him?

4 A No.

5 Q Anything about this situation where you know
6 Mr. Old that would cause you to lean one way or another
7 in this case or could you be fair and impartial to both
8 sides?

9 A I could be fair and impartial.

10 Q Okay. To both the State and the Defense?

11 A Yes, sir.

12 Q The other attorney working for the Defense in
13 this case, Lance Hinson, do you know him?

14 A No.

15 Q You mentioned somewhere in your questionnaire
16 that you knew some people in prison, could you talk to
17 me about that a minute?

18 A I had a cousin that was sentenced to some time
19 and a friend of my brother's was sentenced to some time.

20 Q Okay. Was that around here locally?

21 A Yes, sir. Local.

22 Q Anything about that situation that made you
23 feel, leave you with hard feelings about defense
24 attorneys or hard feelings about prosecutors or about
25 police officers?

1 A No. They got caught.

2 Q So they deserved what they got?

3 A They deserved it.

4 Q You mentioned also in your questionnaire that
5 you had had some prior jury experience I believe, is that
6 right?

7 A Yes.

8 Q Okay. Was that on a criminal case?

9 A No.

10 Q Civil case?

11 A Yes.

12 Q Okay. You have never been a juror in a
13 criminal case?

14 A No.

15 Q You also mentioned that you knew something
16 about the facts of this case, would that be from the --
17 the day before I was summoned there was an article in the
18 newspaper.

19 Q Is that all you know about it?

20 A That's it.

21 Q Assuming that's all you know or even if you
22 knew something else or heard something else do you, in
23 order to be a fair and impartial juror you have got to
24 be -- only to decide the case based on the evidence
25 presented during the trial. Would you be able to do that

1 and put aside whatever knowledge you might have, whether
2 it be newspaper or whatever and not consider that as
3 evidence in any way?

4 A I believe I could.

5 Q Okay. Okay. Mr. Cox, I'm going to ask you
6 some questions about your opinions and things like that,
7 there's no right or wrong answers and if you don't
8 understand any question be sure and ask me again or if
9 I mumble or something make sure you understand what I'm
10 asking.

11 A I will.

12 Q I have looked at your questionnaire in
13 reference to your answer about the death penalty, you
14 have answered that you thought the death penalty was
15 appropriate in some murder cases and could return a
16 verdict in a case that assessed the death penalty.

17 I assume from that answer you believe
18 that some murder cases, some capital murders deserve the
19 death penalty?

20 A That's true.

21 Q And some capital murder case would deserve a
22 life sentence rather than the death penalty?

23 A I'm not so sure about that if it's a capital
24 murder case then if a man is convicted or the person is
25 convicted in capital murder then the death penalty should

1 be appropriate.

2 Q Okay. Let me talk to you a little bit about
3 murder cases in Texas versus capital murder and about the
4 law in regard to both of those; murder in Texas is a
5 situation where you have intentionally caused someone's
6 death.

7 And when I say that that's without legal
8 justification such as self defense or accident or
9 something like that.

10 MR. OLD: I object. That is
11 a misstatement of the law. It's "intentionally or
12 knowingly."

13 THE COURT: Sustained.

14 Rephrase.

15 MR. TOWNSEND: Okay. Murder
16 in Texas is where someone has intentionally or knowingly
17 caused someone's death and that's without self defense
18 or anything like that, they have intentionally or
19 knowingly caused the death of another person. In Texas
20 that's murder punishable by five years probation up to
21 99 years or life in the penitentiary.

22 Now, capital murder on the other hand
23 is punishable by either life imprisonment or the death
24 penalty but in order to have capital murder -- in Texas
25 you have got to have what I call "plain murder" what I

1 just talked about, which is intentionally or knowingly
2 causing a person's death but in addition to this you have
3 got to have something else, you have got that murder, the
4 victim must have been a police officer killed in the line
5 of duty or a murder during commission of a robbery,
6 murder during the commission of a rape, something of that
7 nature.

8 So basically what we are talking about
9 for a capital murder is a murder plus something else,
10 plus another felony, you know, robbery or something like
11 that.

12 Can you see the difference between that
13 and capital murder -- excuse me, that and "plain murder?"

14 THE POTENTIAL JUROR: Yes.

15 Q (BY MR. TOWNSEND) Okay. There's a sheet of
16 paper up there I would like for you to look at -- and
17 approach the witness, Your Honor?

18 THE COURT: You may.

19 MR. TOWNSEND: It's basically
20 the indictment in this case.

21 If you will just read over this part
22 right here and then I will talk to you about it.
23 (Indicating)

24 Okay. Mr. Cox, could you see where if
25 the State could prove all that that rather than just

1 being a plain murder that would be a capital murder
2 because there is a murder and also robbery?

3 THE POTENTIAL JUROR: Yes.

4 Q (BY MR. TOWNSEND) Okay. Now, that sheet of
5 paper there is actually the indictment or a copy of the
6 indictment in this case.

7 Do you understand that an indictment is
8 something that the Grand Jury returns that allows a case
9 to go forward to reach the point where a jury looks at
10 it?

11 A Yes.

12 Q Just like I talked to you a minute ago, like
13 you have to decide the facts of the case based on the
14 evidence to be fair and impartial you have got to -- to
15 do just that and that indictment is not evidence in this
16 case of any kind, you know, we have got to prove our case
17 through the witnesses.

18 Would you be able to put the fact that
19 an individual has been indicted by a Grand Jury, would
20 you be able to put that aside and decide the case just
21 strictly on the evidence presented?

22 A I believe I could.

23 Q Okay. Let me talk to you a little bit about
24 the procedure in a capital murder case, they are a little
25 different than any other kind of case; in a capital

1 murder case the first thing you are going to do -- if you
2 will there is a sheet up there that looks kind of like
3 that that you might refer to that.

4 The first thing you are going to do
5 right there at the top of the page -- you are going to
6 hear evidence on guilt or innocence and after you have
7 heard that evidence you are going to decide one thing and
8 one thing only and that's basically, did he do it?

9 MR. OLD: I'm going to object
10 to that statement and ask that it be removed. The State
11 has the burden of proving him guilty beyond a reasonable
12 doubt and by his statement -- his statement implies that
13 we have a burden of proof.

14 THE COURT: Rephrase.

15 Sustained.

16 MR. TOWNSEND: I'm not sure
17 what I said but basically, Mr. Cox, during the guilt or
18 innocence phase of the trial the State would present
19 evidence and the Defense would present evidence if they
20 chose to and after all that, after you have heard all
21 that evidence you have got to decide first of all the
22 guilt and innocence part of the trial, you decide
23 basically did the State prove their case, did he do it
24 or not?

25 If you decide that the person is not

1 guilty then, of course the trial is over, everybody goes
2 home.

3 If you find the person guilty then you
4 go on to the next phase and that's what we call in a
5 criminal trial we call that "the punishment phase."

6 Do you see that down there in the middle
7 of the page? (Indicating)

8 THE POTENTIAL JUROR: Yes,
9 sir.

10 Q (BY MR. TOWNSEND) Once you get to the
11 punishment phase you are going to hear more evidence, you
12 are going to hear evidence from the State, you might or
13 might not hear evidence from the Defense side of the
14 table and that -- it's not going to be about whether the
15 person committed the crime or not because you have
16 already decided that he committed the crime in the guilt
17 or innocence stage but that evidence is going to be
18 evidence just about the proper punishment in the case,
19 whether it should be a life sentence or death penalty.
20 And that evidence is going to be anything, it could be
21 evidence of -- that the defendant had a good family
22 history or had a good family background or had a poor
23 family background, it could be evidence from a
24 psychologist or psychiatrist, it could be evidence from
25 the State that the defendant has been involved in

1 criminal activity previously, it could be evidence that
2 he's a religious man, evidence that he's not a religious
3 man, any number of things, just use your own imagination.
4 But basically it would be evidence presented by the State
5 to try to show that the defendant deserved the death
6 penalty and evidence presented by the defendant to show
7 that they felt like the defendant deserved the life
8 sentence.

9 MR. OLD: It presumes that we
10 have a duty or implies that we have a duty to produce
11 evidence.

12 THE COURT: Mr. Townsend?

13 MR. TOWNSEND: Your Honor, I
14 was not allowed to finish my sentence, I was going to
15 finish the sentence with -- was "If they produced
16 evidence."

17 THE COURT: Overruled.

18 MR. TOWNSEND: You understand?

19 I was going to maybe cover this a little
20 later but I will cover it right now; the Defense does not
21 have a burden of proof, we have got to prove this case
22 to you beyond a reasonable doubt, the Defense, they don't
23 have to prove that the defendant in a criminal case did
24 not do the crime, we have got to prove that he did.

25 Do you understand that?

THE POTENTIAL JUROR: I

understand that.

Q (BY MR. TOWNSEND) It's the same way in the punishment phase as to the first Special Issue number and we'll talk about that in a little bit but we have got to prove that -- that first Special Issue number to you, the Defense does not have -- when I say "They might choose to put on evidence", they have the right to do that but they also have the right not to put on evidence, that's what their choice is.

Would that be okay with you if they did or didn't?

A Be fine with me.

Q Okay. Let me try and get back in line here; after you hear evidence during the punishment phase then you are going to go to what we call "Special Issue #1" and you are going to consider -- I will tell you what Special Issue #1 is in a little bit but first it's going down the chart, Special Issue #1, if you vote "Yes" on that then you would go to Special Issue #2, if you vote "No" on that then the defendant would automatically get a life sentence but if you vote "Yes" on Special Issue #1 then you are going to go to Special Issue #2 and we'll talk about that in a minute, if you vote "Yes" on Number Two then the defendant gets a life sentence, if you vote

1 "No" on Number Two the defendant gets the death penalty.

2 If you will, there is another sheet of
3 paper there that looks about like this and on the top it
4 says "Special Issue", do you see that up there?

5 A Yes.

6 Q Read Special Issue #1 then we will talk about
7 it.

8 Okay?

9 To me Special Issue #1 basically means
10 that it's a question about the defendant's future
11 dangerousness, is that kind of the way it looks to you?

12 A That's the way it read to me.

13 Q Okay. Special Issue #1 in talking about future
14 dangerousness says that, and again, that's an issue of
15 where the State, we have got to prove beyond a reasonable
16 doubt that there is a possibility that the defendant
17 would commit criminal acts of violence in the future,
18 that would he serve as a continuing threat to society.

19 Now, what it doesn't say, it doesn't say
20 that you are required to predict what he's going to do,
21 you are not. You are not required to guarantee what he's
22 going to do.

23 MR. OLD: Your Honor, we
24 object to the statement. The State is couching it in
25 that it's the State's position that he's speaking to him

1 like that is the law and those are his instructions.

2 THE COURT: Overruled.

3 MR. TOWNSEND: Mr. Cox, there
4 is a word here, the word "probability", like I was
5 saying, you are not required -- the State is not required
6 to prove beyond a reasonable doubt or guarantee you that
7 he would commit another act of violence, just prove to
8 you beyond a reasonable doubt that there is a possibility
9 that that would happen.

10 Do you understand the difference there?

11 THE POTENTIAL JUROR: Yes,
12 sir. I do.

13 Q (BY MR. TOWNSEND) Okay. And then there is a
14 phrase down here at the end of the second line, it says
15 "Criminal acts of violence."

16 Now, what the defendant would be on
17 trial for is a capital murder but there are many other
18 criminal acts of violence rather than capital murder, an
19 assault is a criminal act of violence, rape, attempted
20 murder, there's a number of criminal acts of violence.

21 You're not required to prove that he
22 will commit another murder, just that it would be
23 probable that he would commit some criminal act of
24 violence.

25 Are you with me so far?

1 A I'm following you.

2 Q Okay. The important thing, Mr. Cox is we have
3 got to have fair and impartial jurors, we have got to
4 have the kind of jurors that can look at the guilt and
5 innocence phase of that trial and at that point you have
6 already decided that person is guilty of the crime but
7 then there are other decisions to make and the Special
8 Issue #1 is, you are required to make a decision on the
9 future dangerousness of that defendant.

10 And we have had jurors who said in the
11 past, who said things like, "Well, you know, if I find
12 a person guilty of capital murder, forget it. I am
13 automatically going to give them the death penalty."

14 They are not being fair and impartial
15 because in order to be fair and impartial you have got
16 to be able to show, you have got to be able to honestly
17 consider all those issues before answering Special Issue
18 #1, consider all that evidence, both the evidence at
19 guilt and innocence and evidence that you heard during
20 the punishment phase of the trial.

21 Could you do that? Could you weigh all
22 that evidence before deciding your answer to Special
23 Issue #1?

24 A I believe I could.

25 Q Okay. See, what we are looking for is jurors

1 who are not going to just automatically go one direction
2 or another but base their decision on Special Issue #1
3 on the evidence just like they did the guilt or innocence
4 on the evidence.

5 You could do that?

6 A I believe so.

7 Q Okay. Take a minute there and read Special
8 Issue #2 and then let's talk about it.

9 Okay. That is kind of a legal mouthful
10 there, isn't it?

11 A Yeah. Some pretty long words there.

12 Q Let me tell you what it means to me and you can
13 tell me whether you agree or disagree; basically Special
14 Issue #2, what it says is, okay, you have already found
15 this person guilty of capital murder, you have already
16 decided in Special Issue #1 that they are a future danger
17 or probably a future danger, in Special Issue #2 it says
18 basically now that you have found those two things is
19 there anything in this case, anything in the evidence
20 that you find that is sufficiently mitigating or reduces
21 the defendant's blameworthiness enough that he should
22 receive a life sentence rather than the death penalty.

23 And so what you are being asked is if
24 you answer "Yes" you are saying, "Well, yes, there's
25 something in this case that makes me think he should

1 receive a life sentence and not the death penalty."

2 If you answer "No" then you have
3 basically said, "Well, I have reviewed all the evidence
4 again and I don't see any reason to give this guy -- any
5 sufficiently mitigating reason to give this guy a life
6 sentence, you know, I think that he should go ahead and
7 get the death penalty."

8 Mitigating evidence, sufficient
9 mitigating evidence is that evidence that reduces the
10 defendant's moral blameworthiness or kind of reduces the
11 blame I guess you might say and that is an issue that the
12 State does not have the burden of proof on, we don't have
13 to prove that to you beyond a reasonable doubt. That
14 Special Issue #2 is just kind of each juror's opinion.

15 Is there something in there that, you
16 know, it might -- that "something" might be the fact that
17 the defendant is very old, the fact that the defendant
18 is very young, the fact that the defendant was
19 intoxicated when he did it, you know, some people might
20 say, different jurors will look at the same evidence in
21 different ways, one juror might say, "Well, if he was
22 intoxicated that doesn't make any difference to me, he
23 still did it."

24 Another juror might look at the same
25 evidence and say, "Well, you know, I don't believe that

1 would have happened if he hadn't been intoxicated so that
2 makes a difference to me."

3 Do you see what I'm saying?

4 A Yes.

5 Q Basically Special Issue #2 is asking you to
6 look back again at all the evidence and see if there's
7 anything in the -- anything there that you find that
8 makes you think the person should receive a life sentence
9 rather than the death penalty, are you with me?

10 A Yes.

11 Q And these matters of evidence that I have
12 talked about, it may be psychiatric testimony, it may be
13 testimony about the person's family history, their age,
14 the fact that they were intoxicated or not, it could be
15 any number of things.

16 And the law requires you in order to be
17 a fair and impartial juror, in order to be qualified to
18 sit on a case like this you have got to be able to
19 consider all that evidence.

20 Now, that's not to say you have to put
21 a lot of weight on the evidence, you might consider the
22 evidence and decide that this is really important or you
23 might consider the evidence and decide, well, that's not
24 important at all, as long as you are willing and able to
25 fairly consider the evidence.

1 Do you believe that you could fairly
2 consider any of this type of evidence then make your
3 decision?

4 A Yes, sir.

5 Q Okay. When you say that I mean, you know, you
6 already decided the guy is guilty of capital murder, you
7 have already decided that the defendant is probably going
8 to be a danger to society and you have got to be able to
9 be fair and go back and go over all the evidence and
10 decide that second Special Issue even though you made
11 those decisions on guilt or innocence, even though you
12 made that in Special Issue #1 because after all this is
13 a different question so you have got to re-think
14 everything, could you do that?

15 A Yes.

16 Q Okay. Mr. Cox, I know a lot of this stuff
17 about capital murder and murder is a little -- may be
18 something you are not that familiar with, have not been
19 that familiar with in the past, I know that you have your
20 answer here on the first page was if you are in favor of
21 the death penalty in some murder cases do you agree that
22 a life sentence would be appropriate under the proper
23 circumstances and your answer was "No."

24 Now that we have explained to you the
25 process to go through, what we need are those jurors who

1 can, if they have heard the facts of the case and they
2 have heard all the punishment evidence, they can in an
3 appropriate case give a person a life sentence if they
4 believe the facts are appropriate, on the other hand if
5 they believe that the facts are appropriate give the
6 person the death penalty.

7 Could you just as readily give the
8 person the death penalty or a life sentence if you felt
9 the facts were appropriate for that case?

10 A If it was appropriate I feel that I could do
11 that.

12 Q Mr. Cox, we are not -- let me remind you we are
13 not asking you today what you would do in this case or
14 what you would do if this were the evidence, we are just,
15 you know, if the facts were appropriate based on the way
16 you viewed those facts and viewed that evidence could you
17 go one direction or the other, is that right?

18 A Yes.

19 THE COURT: Twenty-five
20 minutes.

21 MR. TOWNSEND: Thank you, Your
22 Honor.

23 Let me back up and talk to you a little
24 bit about some general areas of the law that don't
25 particularly refer to death penalty cases but just about

1 the law in general; in a murder case, not a capital
2 murder but just what I talked about awhile ago as being
3 "plain murder", the punishment range is anywhere from
4 five years probation up to 99 years or life in the
5 penitentiary and the Legislature when they made that
6 decision I think they kept in mind the fact that, you
7 know, there are a lot of different --

8 MR. OLD: I object to his
9 speculating about the Legislature did something.

10 THE COURT: Sustained.

11 MR. TOWNSEND: Anyway there's
12 a broad range of punishment there, I think you will agree
13 with me that's a large difference between five years
14 probation and 99 years or life in the penitentiary.

15 Of course jurors have to take into
16 account the type crime that was involved, vicious murder
17 would be treated probably more severely than as the Judge
18 remarked the other day a mercy killing, a situation where
19 maybe two elderly people have lived together for years
20 and one of the parties has cancer and is in a great deal
21 of pain and really begs the other party to kill them to
22 get them out of their misery. If that person did that
23 maybe that might not be looked on as severely as your
24 regular vicious type murder.

25 But anyway, in any case in any criminal

1 case there is a range of punishment. In murder the range
2 of punishment is from five years probation to 99 years
3 to life.

4 We are asking you today to look in and
5 say, "Well, if I found a person guilty of murder, not the
6 robbery so it was only murder" -- do you see what I'm
7 saying?

8 If you decided that the State had proven
9 beyond a reasonable doubt that a defendant committed a
10 murder, we didn't prove the robbery then that person --

11 THE POTENTIAL JUROR: The
12 difference in a capital murder case and just a murder
13 case?

14 Q (BY MR. TOWNSEND) Correct.

15 And keeping in mind that broad range of
16 punishment and all the type murders that if you found a
17 person guilty of murder in order to be a fair and
18 impartial juror and a qualified juror you have got to be
19 able to consider that full range of punishment,
20 everything from 99 years to five years probation.

21 You don't have to give five years
22 probation, you don't have to give 99 years or life but
23 you have got to be able to fairly -- fairly consider that
24 full range of punishment.

25 Could you do that?

1 A Yes. I could.

2 Q The burden of proof in a criminal case rests
3 with the State of Texas, we accept that and that burden
4 of proof is beyond a reasonable doubt.

5 There is a definition for that and I'm
6 not going to take time to read it to you but basically
7 we are not required to prove the burden -- we are not
8 required to prove our case beyond all doubt but are
9 required to prove it beyond a reasonable doubt and I
10 think we talked a little bit earlier that the defendant
11 on the other hand does not have a burden, they don't have
12 to prove anything, we have got to prove the case, that's
13 the way the law is.

14 You don't have a problem with that, do
15 you?

16 A No. I don't.

17 Q Okay. Along with that burden of proof there
18 is a couple of things, one is that in a criminal case the
19 defendant can sit quietly, not put on any evidence but
20 you still in order to be a fair juror you have got to
21 base your ruling -- base your decision on the facts
22 presented to you and in the evidence, could you do that
23 and not hold that against the Defense if they didn't
24 produce as much evidence or didn't produce any evidence?

25 A The way I understand it you have to prove the

1 man is guilty, he doesn't have to prove a thing.

2 Q Correct.

3 Along with that there is another element
4 of law or another area of the law, the Fifth Amendment
5 privilege and that's where that is concerned is that the
6 defendant has the right not to -- to choose not to
7 testify and the defendant may choose not to testify in
8 a trial.

9 You know, it's kind of human nature if
10 you are sitting on a jury to say, "Well, I would like to
11 hear what he's got to say" or, you know, "If that were
12 me I would want to get up there and tell my side."

13 But there's any number of reasons why
14 a defendant might not testify and what is important about
15 that is that it goes right back to the burden of proof.
16 The burden of proof is still here and what -- what is
17 presented as evidence, the fact that the defendant does
18 present or does not testify, if that happens that is not
19 evidence.

20 Would you be able to base your decision
21 strictly on the evidence and not hold it against the
22 defendant in any way if he chose not to testify?

23 A I believe I could.

24 Q Okay. That also goes, follows and is true when
25 you talk about the punishment phase of a capital murder

1 trial, you might like to hear the defendant get up there
2 and say, "Well, I'm sorry", but the defendant also has
3 the right not to testify during the punishment phase if
4 that's their choice and you have got to base your
5 decision in that punishment phase on the evidence that
6 is presented to you and not on the fact that the
7 defendant chose not to testify even during that phase.

8 Would you be able to do that?

9 A I believe I could.

10 Q Mr. Cox, in a criminal case you hear all sorts
11 of testimony from all sorts of witnesses, you might hear
12 testimony from ministers, police officers, lab
13 technicians, doctors, you know, any -- just might have
14 -- hear testimony from someone you know, I wouldn't think
15 so but you never know but the basic thing in a criminal
16 trial is you have got to be able in order to be fair and
17 impartial you have got to start each witness out at the
18 same starting line, not give one of them a little edge
19 before they testify and say, "Well, you know, that guy
20 is a priest, I know he's not going to lie to us" or "That
21 guy is a lab technician, I know he couldn't be mistaken."

22 Do you think you could take each
23 witness, whether he were a police officer or whoever he
24 might be and start them out at the same starting point
25 and not give one a little bit of an advantage, could you

1 do that?

2 A Well, it would be harder for me to say that a
3 preacher is lying than it would be for a lab technician
4 but I believe I could listen to them and come up with
5 whether they are telling the truth or not.

6 Q What we are asking you to do is take each
7 witness and start them out at the same spot, listen to
8 their testimony and then after listening to their
9 testimony decide their credibility.

10 A I could do that.

11 Q Okay. And not give that -- what I say, when
12 I say, don't give anyone an edge to start out with do you
13 know what I mean?

14 Don't say, "Well, you know, the guy is
15 a minister", you know, we need jurors that are going to
16 be able to say, "I don't care if he's a minister or
17 police officer or who he is, I want to listen to what he
18 has got to say" and then you would decide whether he's
19 telling the truth or not and you wouldn't give them a
20 head start?

21 A I don't think so. I don't consider anybody to
22 lie to me until I have caught them in one so I believe
23 I could take each person at his word.

24 Q Are you saying that you are going to start off
25 believing each witness until they testify in such a way

1 that they bring their believability into question to you?

2 A Yes.

3 Q And that would be irregardless of who they
4 were?

5 A That would be irregardless.

6 Q Okay. I have asked you a lot of questions and
7 maybe this is a good time for me to stop and see if
8 there's any question you might want to ask me or anything
9 you want to comment about that I haven't given you an
10 opportunity.

11 A No.

12 Q The main thing we are talking about, Mr. Cox,
13 that is important is that you be able to be fair and
14 impartial in this case or in any criminal case and that
15 you be able to follow the law and you and I, everybody
16 else in this room has opinions about the law, if the
17 Judge instructs you on an area of the law would you
18 follow that law even if it was a law that you don't
19 particularly agree with?

20 A If I could.

21 Q And that would include the law in Texas about
22 capital murder, the law in Texas about murder or anything
23 else?

24 A That's -- I am trained to follow instructions.

25 Q I forgot from your questionnaire, where do you

1 work?

2 A I'm a mechanic at Pilgrim's.

3 Q And they -- if the boss tells you what to do
4 you are going to do it?

5 A That's right.

6 Q The Court -- in our system the Court is the
7 boss and the Judge will give the instructions of law and
8 those instructions of law, you would be able to read
9 those and follow those?

10 A I believe I could.

11 MR. TOWNSEND: Pass the
12 witness, Your Honor.

13 THE COURT: Mr. Old?

14
15 VOIR DIRE EXAMINATION

16 BY MR. OLD

17
18 Q Mr. Cox, I believe your questionnaire -- do you
19 have the questionnaire in front of you?

20 A No.

21 THE COURT: I have his
22 questionnaire, I will tender it to him.

23 There you go, Mr. Cox.

24
25 (Handed to the potential juror.)

1 MR. OLD: At the bottom of the
2 first page there is a statement which you answered "No"
3 and if you are in favor of the death penalty -- and you
4 said you were in favor of the death penalty, is that
5 correct?

6 THE POTENTIAL JUROR: That's
7 what I have got.

8 Q (BY MR. OLD) And it says then in some murder
9 cases you agree that a life sentence rather than the
10 death penalty would be appropriate under the proper
11 circumstances and you answered "No, a life sentence would
12 not be proper under the proper circumstances?"

13 A That's what I said.

14 Q Is that your answer?

15 A Well, the way that this man over here put it
16 to me awhile ago I'm not so sure about that.

17 Q Let me -- the difference is I think Mr.
18 Townsend was telling you the law of when you could give
19 a death sentence and this -- for capital murder and
20 defined capital murder as the commission of murder with
21 the additional --

22 A With another crime attached.

23 Q A robbery or -- what?

24 A "With another crime attached."

25 Q Yeah. Okay.

1 Now, the question is just to murder, it
2 doesn't say capital murder or murder, you could conceive
3 of circumstances to where if you were making the law
4 whether -- or confined in this definition of capital
5 murder you can consider whether a plain murder, knowingly
6 and intentionally killing someone, you can consider that
7 it would not be appropriate?

8 A No. That's not the way --

9 Q I'm not trying to put words in your mouth, I'm
10 trying to figure out what you mean.

11 A No. In some murder cases another penalty would
12 be appropriate.

13 Q But I mean you are -- I'm not asking you to
14 agree with what the law is, I mean in your opinion could
15 the death sentence be passed -- passed, extended past the
16 offense of capital murder, is that what you are saying?

17 MR. TOWNSEND: I don't believe
18 it's relevant on what his opinion is as to what the
19 punishment should be on plain murder.

20 THE COURT: Overruled.

21 I think it may help both of you to
22 decide whether or not to accept the juror in this, it may
23 not be a legal disqualification, he's just asking,
24 basically asking you if you could change the law would
25 you make death for all murder cases?

1 MR. OLD: Would you make it
2 for more or --

3 THE POTENTIAL JUROR: No.

4 Q (BY MR. OLD) You would leave it like it is,
5 that the death penalty would apply in killing a policeman
6 or fireman while he's engaged in his duties, in the
7 commission of a robbery, a kidnapping, a rape and I
8 believe another one is killing a child under six years
9 old.

10 You would not extend the death penalty
11 to any other circumstances under which you could see
12 murder could be committed?

13 A It would have to be some pretty bad
14 circumstances.

15 Q But there are other circumstances that you
16 would include that if you were to -- if you were "King
17 for a Day" so to speak?

18 A I would hate to have this burden put on my
19 shoulders.

20 Q Let's presume that you have found a man or a
21 person guilty of murder, I mean how -- and I will let you
22 imagine the facts, you consider it to be a vicious act
23 to which you could not justify in any way and yet it is
24 simply the intentionally or knowingly killing someone,
25 it is not a capital offense.

1 Would you be of the opinion that
2 punishment ought to be greater than life?

3 MR. TOWNSEND: I object again.
4 I'm not sure where he's going with that. That's not
5 relevant to any issue here.

6 THE COURT: Sustained.

7 I think you certainly have a right to
8 inquire as to whether or not he would expand or narrow
9 the law but I think that last question is a bit too
10 broad.

11 MR. OLD: You have made a
12 statement in your answer in your questionnaire to the
13 question you agree that a life sentence rather than the
14 death penalty would be appropriate under the proper
15 circumstances and you say "No."

16 My question is; other than the
17 definition of capital murder that you have been given,
18 the question is as to some murder cases, it doesn't say
19 "Some capital murder cases", were -- do you think as to
20 a plain and ordinary murder case that is non-capital
21 murder death is really more appropriate than life is what
22 the answer --that you may prefer the death penalty?

23 MR. TOWNSEND: Your Honor, now
24 he's trying to get him to tell him a series of facts
25 which he would make a certain decision. I don't see the

1 relevance there. I don't believe it's proper to try to
2 tie the juror, potential juror to a certain list of
3 facts.

4 THE COURT: I agree that it's
5 improper to try to commit the juror to a specific set of
6 facts. I don't think that's the question so I'm going
7 to overrule the objection but I'm also going to instruct
8 Mr. Cox if you can answer his question, fine, but if you
9 can't take the circumstances -- excuse me -- you are not
10 required to come up with a set of circumstances.

11 THE POTENTIAL JUROR: Let me
12 ask the question and then I will try to answer your
13 question as best I can, all right?

14 A capital murder case is a murder that
15 is committed with another crime, another felony, is that
16 not right?

17 MR. OLD: With some other
18 felony.

19 THE POTENTIAL JUROR: Okay.
20 And a murder case is just a murder with no other crime
21 attached?

22 Q (BY MR. OLD) The definition of murder is
23 intentionally or knowingly killing someone without
24 justification.

25 Justification and proof of justification

1 is like self defense which is a defense to murder or
2 perhaps an accident but that negates the intent of
3 intentionally or knowingly.

4 Where you find someone intentionally and
5 knowingly killed someone without justification is murder.

6 A If a man was to just walk through that door and
7 not do anything else, just open that door up, stick a gun
8 in and shoot somebody in here for no other reason at all
9 then just to shoot somebody I believe I could give him
10 the death penalty.

11 Q I mean you believe that the law ought to be
12 that that ought to be punishable by death?

13 A Some murder cases. Yes.

14 Q If I suggested to you what you just described
15 what was probably the equivalent of what a drive-by
16 shooting is?

17 A Yes.

18 Q And that does not fall into the definition of
19 capital murder.

20 A I don't know.

21 MR. TOWNSEND: Object. Calls
22 for a legal conclusion.

23 THE COURT: Sustained.

24 MR. OLD: You understand Mr.
25 Townsend's definition of capital murder that does not

1 fall into it?

2 THE POTENTIAL JUROR: I guess.

3 I'm not sure whether a drive-by shooting other than the
4 shooting part would be a felony or not. I am not --

5 Q (BY MR. OLD) Let's just assume that that does
6 not fall into capital murder.

7 A Okay.

8 Q Now, you are of the opinion or you believe that
9 is something that the law permitting you could punish by
10 death?

11 A Yes. I could.

12 Q I'm not talking about the circumstances of this
13 case.

14 A I understand.

15 Q If you heard a case, ended up to be a murder
16 case, not a capital murder and you were of the opinion,
17 well, this is one I think the death penalty ought to be
18 the law in because if you are bias in that case that is
19 being for the death punishment, under those circumstances
20 that's going to effect your verdict or sentence that you
21 give that case?

22 A No.

23 Q I mean you will be instructed that you are to
24 follow the law and the Court will tell you what the law
25 is, the Court will give you a written charge telling you

1 the law in this case, that is which law applies and what
2 law applies, he may give you a definition and he may give
3 you instructions as to what you are to do if you are to
4 find -- can you lay aside your pro-capital punishment
5 feelings and set them aside and not have them influence
6 you in reaching a verdict?

7 A I can stay within the bounds of the guidelines
8 given me.

9 Q How long have you worked out at Pilgrim's?

10 A It will be nine years in April.

11 Q You are a -- are you a supervisor, maintenance
12 supervisor?

13 A No.

14 Q I believe when the Judge talked to you all the
15 other day as a group he told you that the trial was going
16 to last, estimated two weeks or more?

17 A Yes. That's what the Judge said.

18 Q That's your recollection?

19 Do you know whether or not Pilgrim's
20 pays employees when they are on jury duty?

21 A They do.

22 Q They do?

23 So you will be paid when you are here
24 or there?

25 A Yes, sir.

1 Q You are a Sergeant in the Texas National Guard?

2 A I am a "Sergeant 1st Class."

3 Q Are you connected to the Army here, the
4 division that is here?

5 A Yes, sir.

6 Q What is your specialty? You are engineers?

7 A No. We are infantry.

8 Q "Infantry?"

9 Other than a "Sergeant 1st Class" are
10 you an infantry sergeant?

11 A I am an infantry sergeant.

12 Q Do you have any specialized training?

13 A No.

14 Q I see that you belong to Talco Volunteer Fire
15 Department?

16 A I do.

17 Q How long have you belonged to that entity?

18 A Over five years.

19 Q Are you active in that organization?

20 A I make every meeting I can.

21 Q Do you make an effort to make those meetings?

22 A Yes. I do.

23 Q I mean it's a serious undertaking to you?

24 A Yes. It is.

25 Q I mean I am sure as in every organization there

1 are some of those people that joined and never show up?

2 A There are those.

3 Q But you are a serious member of that
4 organization?

5 A Yes. I am.

6 Q Do you hold any rank in that organization?

7 I don't know how you all do that.

8 A I am pretty low on the totem pole, I am
9 Assistant Training Officer.

10 Q "Assistant Training Officer?"

11 A Yes.

12 Q Mr. Townsend asked you about giving equality
13 to the witnesses, that is the fact that one of them I
14 believe was a preacher and a law enforcement officer,
15 maybe you answered with or he asked with do law
16 enforcement officers if witnesses are testifying does
17 that badge of authority or their office, does that give
18 them some degree of credibility with you merely because
19 they are a peace officer?

20 A Well, I have known some good ones and I've
21 known some bad ones.

22 Q Okay.

23 A But --

24 Q You told me that you took everybody to tell you
25 the truth until you found different?

1 A That's true.

2 Q Do you consider it more likely for a peace
3 officer to tell the truth than a non-peace officer?

4 A It's like I said, I take everybody for their
5 word.

6 Q I mean they don't have anymore credibility with
7 you than just a plain old person would have?

8 A Yes, sir. They do.

9 Q What is that?

10 A They are -- that's their job, they are supposed
11 to be honest and -- in everything that they do.

12 Q Now, you believe them to be that?

13 A Not all of them.

14 There's got to be some good ones and
15 there's got to be some bad ones.

16 Q But you are going to make that judgment after
17 you observe them?

18 A I'm going to do the best I can.

19 Q You are not going to say, "I really believe
20 that we are going to hear the truth from this man because
21 he's wearing a badge", you are going to say "Let's hear
22 what he's got to say and judge him on what we see?"

23 A That's the way I will do it.

24 MR. OLD: Approach the
25 witness?

1 THE COURT: You may.

2 MR. OLD: I'm looking for --

3 I show you what has been marked "Defendant's Voir Dire
4 Exhibit 1", it is a Witness List and I would like to give
5 you a minute to review it and what I'm asking you about
6 this list is if you know or think you know any of the
7 people on this list.

8
9 (Handed to the potential juror.)

10
11 THE POTENTIAL JUROR: The only
12 witness in here, that "Ragsdale." (Indicating)

13 MR. OLD: What page are you
14 on?

15 THE POTENTIAL JUROR: Number
16 2.

17 Q (BY MR. OLD) Do you know Mr. Ragsdale?

18 A I don't -- the last name is the only one that
19 is familiar with me and I worked with a "Ragsdale" but
20 his name was "Jessie."

21 That's the only name that is familiar
22 with me.

23 Q You don't know James Franklin Ragsdale?

24 A Not that I know of.

25 Q Anyone else?

1 A I don't see anybody on here. I'm not familiar
2 with any of the law enforcement people in Daingerfield
3 other than my aunt.

4 Q Who is your aunt?

5 A Martha Cox.

6 Q And is she in law enforcement?

7 A She is a deputy in Daingerfield.

8 Q What type deputy is she?

9 A I really don't know. I don't know if she works
10 for the City or the County.

11 Q She is your --

12 A My aunt.

13 Q Do you have a fairly close relationship with
14 her?

15 A I see -- well, I love her if that's what you
16 mean.

17 Q Let me -- do you all see each other at
18 Thanksgiving, Christmas, family reunions?

19 A Just about that, Thanksgiving, maybe Christmas
20 every other year, it's not --

21 Q Is she your mother's --

22 A She's on my daddy's side.

23 Q Your father's sister?

24 A No.

25 Q Your father's --

1 A Sister-in-law.

2 Q Did you and she have a close relationship at
3 anytime, for instance when you were a child?

4 A No.

5 Q Did you go visit in their home?

6 A Yes. We did -- do that.

7 Q Spend a few days with them from time to time?

8 A Yes, sir. Spent the night with them a few
9 times.

10 MR. OLD: Your Honor, could
11 we have a short break?

12 THE COURT: You mean like a
13 couple of minutes?

14 Sir, could you step down, please and
15 return back to the lounge and we'll come get you in a
16 moment.

17 MR. OLD: May we approach the
18 bench?

19 THE COURT: You may.

20
21 (The following occurred outside the
22 presence and hearing of the potential juror:)

23
24 MR. OLD: Your Honor, I cannot
25 identify with certainty, I believe that in some of the

1 information that I have been provided and particularly
2 records that were part of the Sheriff's Department the
3 name "Martha Cox" rings a bell. I would not swear that
4 it is in there, I need to know if it is there, if Mr.
5 Townsend knows her I need an opportunity to look and if
6 my understanding -- correct me if I'm wrong, I think she
7 is a juvenile officer, that is her expertise.

8 MR. TOWNSEND: I can't answer
9 that for you but she is not listed as a witness either
10 on the guilt or innocence phase nor on the punishment
11 phase. I don't foresee any circumstance were she would
12 be a witness.

13 MR. OLD: I'm not telling you
14 it is there, it rang a bell when I heard Martha Cox's
15 name. I don't know if it appeared on any of the
16 documentation of the file, that discovery is through
17 another witness, it is possible that's a document that
18 she authorized, approved.

19 THE COURT: Let's finish voir
20 dire, ask him if she has mentioned the Defendant's name
21 if you wish.

22 MR. OLD: Yes.

23 THE COURT: And then after we
24 finish the voir dire and recess since we are not getting
25 challenges stated on the record today I will let you look

1 over your record and if you find that she is connected
2 with the case we'll either work something out or bring
3 him back.

4 Bring him back in.

5
6 (The following occurred in the presence
7 and hearing of the potential juror:)

8
9 THE COURT: Mr. Cox, if you
10 would take a seat right back upon the stand, please.

11 Mr. Old, you may proceed.

12 MR. OLD: Mr. Cox, has your
13 Aunt Martha Cox mentioned to you specifically or
14 generally anything about the incident that gives rise to
15 the charge that is being tried here?

16 THE POTENTIAL JUROR: I
17 haven't seen Aunt Martha in four or five months.

18 Q (BY MR. OLD) Well, I mean this -- if you will
19 look at the indictment the date alleged is within that
20 period of time, about a year ago. (Indicating)

21 A I didn't pay any attention to it.

22 Q I mean --

23 A As far as I know of I can't remember anything
24 that she would say.

25 Q You never heard her discussing it?

1 A No.

2 Q Is there a probability that you are going to
3 see her say this Thanksgiving?

4 A I can't say.

5 Q I mean --

6 A As far as I know we are not going over to their
7 house or they are not coming to our house but I can't say
8 whether or not I will see her or not.

9 Q Well, that's fine. At any family gathering?

10 A We are not planning any.

11 Q Is it in the realm of possibility that within
12 the next month that you would see her?

13 A Yes.

14 Q Okay. You checked that you or one of your
15 family had been a victim of a crime.

16 A What page are you on?

17 Q That's on page 10, victim of a crime, a witness
18 to a crime or been interested in the outcome.
19 (Indicating)

20 A Yes.

21 Q Okay. Can you tell me what crime? Were you
22 personally the victim of a crime?

23 A No. I have never been so far as I know, I have
24 never been a victim of a crime.

25 Q It was somebody near you a victim of a crime?

1 A My brother.

2 Q What type of crime was it?

3 A He was accused of stealing some gas or

4 something at Talco at the school.

5 Q When he was accused -- what is your brother's

6 name?

7 A "Michael Cox, Billy Michael Cox."

8 Q Which store was that?

9 A I think it was the school.

10 Q "At the school?"

11 A Yes.

12 Q I thought you said "At the store in Talco."

13 A No.

14 Q You were a juror in a civil case?

15 A Yes, sir.

16 Q And did you all try it to a conclusion?

17 A Yes.

18 Q Did you all render a verdict?

19 A Yes, sir.

20 Q Do you remember the name of the case?

21 A I remember half of it. It was a pharmacist.

22 Q "Bill Chambers?"

23 A Yes.

24 Q Was it over a stock transaction?

25 A Yes. It was.

1 Q You said that you had read an account in the
2 newspaper about this trial or the facts giving rise to
3 it or alleged facts?

4 A Yes.

5 Q Would it take evidence to remove from your mind
6 what you have read?

7 A I can't even remember what it was about.

8 Q You just remember --

9 A It was a small deal and --

10 Q It was not anyone purporting to know what
11 happened or commenting on what happened?

12 A Not that I could -- it was just upcoming trial
13 or something, I'm not even -- I can't even remember what
14 it was all about but within a couple of days after I read
15 that I got the summons to appear.

16 Q Did it say something about maybe the jury
17 selection would be starting at some point?

18 A I think that was it.

19 Q Do you know anyone that lives in the Cason
20 area?

21 A I know some people that did.

22 Q Who are they?

23 A Willie Simpson, I work with him.

24 Q Do you -- Cason has a volunteer fire
25 department, does Talco train with them, work with them,

1 assist them or --

2 A We would if they called us but I'm not -- I
3 don't remember ever going over this away, I have never
4 gone past Mount Pleasant.

5 Q Do you all have meetings together?

6 A No.

7 Q Or perhaps trained some together?

8 A No.

9 Q Does the term "beyond a reasonable doubt" have
10 a meaning to you?

11 A Yes. It does.

12 MR. OLD: Approach the
13 witness?

14 THE COURT: You may.

15 Q (BY MR. OLD) Let me show you Exhibit 6 and I'm
16 pointing at the sentence starts, "The prosecution has the
17 burden of proving" and let me get you to read the rest
18 of that page.

19 That is the legal definition of
20 "reasonable doubt", at the conclusion of the trial when
21 His Honor instructs you that is part of the law that he
22 will instruct you on.

23 Now, that definition may or may not vary
24 from your definition, if it does can you lay aside what
25 you believe a reasonable doubt to be and follow the

1 instruction of the Court?

2 A I can follow the instructions of the Court.

3 Q Okay. But I mean if you had prior to reading
4 that definition, if you had another definition of it can
5 you lay that aside and not let it influence you?

6 A That is the way that reads is the way I think.

7 Q That's the way you think?

8 A That's the way I think.

9 Q You have been shown a copy of the indictment
10 earlier?

11 A Yes. And I was instructed to read this part
12 right here. (Indicating)

13 Q Yes.

14 Do you consider the fact that -- the
15 fact that a man has been indicted or charged any
16 inference, not evidence, "any inference" of guilt, does
17 it say anything to you that makes you believe he's
18 guilty?

19 A It means that he has been accused of it.

20 Q But it means it -- it's not evidence of
21 anything?

22 A No.

23 My brother was accused of stealing the
24 gas but he was innocent.

25 Q The State has got to prove it?

1 A The State has got to prove it.

2 Q Back to the presumption of innocence, the
3 defendant is not required as you have been told to do
4 anything and I mean -- let's assume that in the trial of
5 this case so far as offering you evidence the defendant
6 did absolutely nothing, he orderly sat here, he did not
7 call witness, he did not testify himself.

8 Would you consider the fact that he did
9 not present evidence to you or testify himself, would you
10 consider that as evidence against him?

11 A No.

12 Q Okay. Can you totally lay aside that fact if
13 this were the case that he didn't testify?

14 I mean does that -- I mean do you think
15 that would raise a question of curiosity in your mind
16 wondering why he did not?

17 A I am sure I would have a question but --

18 Q But can you lay it aside and not let it
19 influence your verdict?

20 A Yes.

21 Q Did you know Mr. Townsend prior to the other
22 day?

23 A I don't believe so. Never met him before in
24 my life.

25 Q Do you know the Sheriff or any other law

1 enforcement officers in Morris County?

2 A Other than my aunt. No.

3 Well, wait a minute. I believe one of
4 my cousins is a law enforcement officer over there, too,
5 it's her daughter Gina.

6 Q "Zena?"

7 A "Gina."

8 Q "Gina Cox?"

9 A It used to be, I don't even know her last name
10 now.

11 MR. TOWNSEND: "Cornelius."

12 MR. OLD: "Cornelius" ring a
13 bell?

14 THE POTENTIAL JUROR: Yeah.
15 He's a big guy.

16 MR. TOWNSEND: No he's not.

17 MR. OLD: Is she with the
18 Sheriff's Department?

19 THE POTENTIAL JUROR: She is
20 not but her husband is, he's a pretty big guy.

21 MR. OLD: And he is an
22 officer?

23 MR. TOWNSEND: No. Yeah.
24 He's a reserve for the City, "Jimmy Cornelius."

25 MR. OLD: Do you know Jimmy

1 Cornelius, her husband?

2 THE POTENTIAL JUROR: I have
3 met him about three times.

4 Q (BY MR. OLD) Well, I mean his name was not on
5 the Witness List, could that create any problem with you,
6 the fact that you have got three relatives that are law
7 enforcement officers in Morris County and this is a
8 Morris County case?

9 A It wouldn't be a problem to me.

10 Q If you were selected on the jury and you would
11 be instructed not to talk to anybody about the case, you
12 would have no problem obeying that instruction even if
13 you had Thanksgiving dinner with them?

14 A It wouldn't bother me a bit.

15 Q It wouldn't bother you a bit?

16 If they tried to discuss it with you
17 what would you do?

18 A I would tell them I couldn't talk about it.

19 Q If they persisted what would you do?

20 A I would politely ask them not to ask me those
21 questions, that I couldn't talk about it.

22 Q Well, you know, I am sure you have had a
23 conversation at least with your wife sometime or another
24 when you told her you didn't want to talk about it and
25 she told you that she didn't and the question kept being

1 asked?

2 A Well, that could cause a problem.

3 Q Would your solution to such an encounter be to
4 get up and leave if you felt like it got to that
5 point?

6 A If it got to the point where it would create
7 an argument, yes, I would.

8 Q Create an argument or you heard information
9 that you shouldn't hear or wouldn't want to hear, I mean
10 I presume if you are sitting on this jury and were
11 going to obey your oath you certainly would not want
12 somebody coming around whispering in your ear talking to
13 you about --

14 A If I was instructed not to talk about the
15 case I would do the best of my ability not to talk about
16 it.

17 Q Okay. I believe you when you say that and I
18 believe you wouldn't do it but I'm talking about if
19 somebody perhaps tried to tell you something, would you
20 put distance between you and them quickly?

21 A Yes. I would.

22 Q The Cox's -- I cannot think of the man's name,
23 there used to be a "Cox" in Daingerfield, perhaps he
24 still is, had "Cox's Relish?"

25 A Different.

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MR. TOWNSEND: "Melvin."

MR. OLD: "Melvin Cox?"

That's not a relation?

THE POTENTIAL JUROR: No.

MR. OLD: Your Honor, we have
nothing else.

THE COURT: Mr. Cox, if you
will step down and step out of the room for a moment.
I will have some further instructions for you in just a
minute. We are about finished.

(The following occurred outside the
presence and hearing of the potential juror:)

THE COURT: Does the State
have any challenges, please?

MR. TOWNSEND: None, Your
Honor.

THE COURT: Does the Defendant
have any challenges?

MR. OLD: Other than reserving
for review some documents in this case to see if any of
his relations, be blood or marriage turn out to be a
potential witness in this case we do not have any
challenges.

1 THE COURT: Like I said, I
2 will give you a chance to look over your evidence and if
3 it becomes an issue you can recall him or we will discuss
4 it among ourselves.

5 I'm going to instruct Mr. Cox not to
6 discuss this matter with anyone until a decision has been
7 made.

8 Bring Mr. Cox.

9 THE BAILIFF: Mr. Cox.

10 MR. OLD: Your Honor, can we
11 hold on just a moment?

12 THE COURT: Please hold on,
13 Leo, hold up just one moment.

14 MR. OLD: Mr. Wardlow tells
15 me that on two occasions Gene Cox has transported him to
16 this courthouse, I don't -- was it today?

17 THE COURT: Well, then, until
18 he -- until we decide whether or not he's a juror I'm
19 going to order the Sheriff's Department not use her to
20 transport him or have any of the Cox's talk to him
21 whatsoever.

22 And I will let Mr. Townsend relay that
23 message.

24 MR. TOWNSEND: I will get a
25 letter out there.

1 Actually there's Jim Cornelius, he's a
2 dispatcher, her husband who is a City reserve police
3 officer, Martha Cox who is a deputy, her husband Gene
4 Cox is a reserve deputy so there's actually four
5 people.

6 Gene Cox who is the reserve deputy is
7 the one who has transported Billy.

8 THE COURT: "Gene Cox?"

9 MR. TOWNSEND: At least more
10 than -- once I know, maybe more than once but I know
11 once.

12 THE COURT: Mr. Townsend, you
13 make sure that Morris County knows that no law
14 enforcement agent associated with Mr. Cox be involved
15 with Mr. Wardlow from this point forward until the
16 decision is made about Mr. Cox's jury service.

17 MR. TOWNSEND: I will do that
18 this evening, Your Honor.

19 THE COURT: Bring in Mr. Cox.

20
21 (The following occurred in the presence
22 and hearing of the potential juror:)

23
24 THE COURT: Mr. Cox, you don't
25 have to come back up here.

1 We are going to release you for the day
2 but I cannot tell you whether or not you will be part of
3 this jury, I can probably not tell you until the latter
4 part of next week, we are going to go through several
5 jurors then we will make a decision about that group then
6 we will go through another group so until you are told
7 you are not on the jury consider yourself a prospective
8 juror.

9 I don't want you to discuss this case
10 with your wife, your family, your friends or with anyone,
11 especially law enforcement in Morris County.

12 So if anyone attempts to talk to you
13 just tell them that I told you you can't talk about it
14 until I have told you whether or not you are on the
15 jury.

16 And if you are on the jury I will have
17 more instructions for you, if you are told that you are
18 not on the jury you can talk to anybody as much as you
19 want.

20 Do you have any questions today?

21 THE POTENTIAL JUROR: No, sir.

22 THE COURT: We will be in
23 contact toward the end of next week.

24 Have a nice day.

25 We will recess until tomorrow morning,

1 9:30.

2
3 (Record closed for October 24th, 1994.)

4
5 (Whereupon Court was recessed until 9:00
6 a.m., October 25th, 1994.)


7
8
9 *****

1 STATE OF TEXAS §
 2 COUNTY OF TITUS §

3
 4 I, Lloyd E. Billups, CSR #149 and
 5 Official Court Reporter in and for the 76th Judicial
 6 District, State of Texas, do hereby certify that the
 7 above and foregoing contains a true and correct
 8 transcription of the proceedings in the above-styled and
 9 numbered cause, all of which occurred in open court or
 10 in chambers on October 24, 1994, and were reported by
 11 me.

12 I further certify that this
 13 transcription of the record of the proceedings truly and
 14 correctly reflects the exhibits, if any, offered by the
 15 respective parties.

16 WITNESS MY HAND this 31ST day of
 17 January, 1995.

18 
 19 LLOYD E. BILLUPS, CSR #149 & OFFICIAL COURT REPORTER
 20 76TH JUDICIAL DISTRICT, STATE OF TEXAS
 21
 22
 23
 24
 25

1 Certification Number of Reporter: 149

2 Expiration Date of Certification: 12/31/96

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